

INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

ASSOCIATED FIREFIGHTERS OF MATTESON, LOCAL 3086, IAFF
("Union," IAFF," OR "Bargaining Representative")

AND

VILLAGE OF MATTESON
("Employer," "Village," or "Management")

Arb. Case No. 07/046

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:
Lisa B. Moss, Attorney

On Behalf of the Employer:
Ronald J. Kramer, Attorney
Melvin L. Sims, Attorney

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the Village of Matteson ("the Employer" or "the Village") and the International Association of Firefighters, Local 3086 ("the Union" or "the IAFF") pursuant to Section 14(p) of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit represented by the Union when fully staffed, consists of approximately 34 sworn, full-time personnel, all of whom are required to maintain firefighter/paramedic status. This dispute arises from the parties' impasse in the negotiation of the Collective Bargaining Agreement ("CBA") to be effective May 1, 2007.

The Village and the Union were parties to a Collective Bargaining Agreement ("CBA") effective May 1, 2004 to April 30, 2007. On December 27, 2006, Local 3086 notified the Village of its intent to open contract negotiations. Thereafter, the parties engaged in approximately nine bargaining sessions and declared impasse on June 15, 2007.

By mutual agreement, the parties selected the undersigned as the Neutral Arbitrator to decide the unresolved non-economic issue of residency in connection with the parties' negotiations for this successor Collective Bargaining Agreement.

A hearing before the undersigned Arbitrator was held on December 3, 2007 at the Village of Matteson Municipal Building, 4900 Village Commons, at 10:00 a.m.¹ The parties were afforded full opportunity to present their cases relative to the impasse issue set out below, which included written and oral evidence in the narrative. A two-hundred

¹ The Exhibits introduced at the December 3, 2007 hearing will be cited as follows: the Joint and Union Exhibits as "Jt. Ex. ___", and "U. Ex. ___", respectively. The Village Exhibits will be cited as "ER. Ex. ___", "ER. Ex. B ___" (Background); "ER. Ex. C ___" (Comparability); and "ER. Ex. R" (Residency), respectively.

forty-five-page stenographic transcript examination of this hearing was also made. Thereafter, the parties were invited to offer such arguments as were deemed pertinent to their respective positions, and the record was held open for submission of post-hearing briefs. At the hearing, the following individuals were present:

For the Village:

Melvin Sims, Attorney
Ronald Kramer, Attorney
Kathleen Murray, Assistant Director, Human Resources
Edwin (Nick) Wilkens, Fire Chief
Emmanuel Imoukhuede, Trustee

For the Union:

Lisa B. Moss, Attorney
Sam Anello, Former Union President – 2005-2007,
Committee Chair (Negotiations)
Scott Gilliam, Local President
Michael Bacer, Secretary

Post-hearing briefs were filed with the Arbitrator and exchanged on January 28, 2008. The record was declared closed on that date.

II. FACTUAL BACKGROUND

A. The Parties

Local 3086 is a labor organization within the meaning of section 3(i) of the Act and is the exclusive bargaining representative, within the meaning of section 3(f) of the Act, for all sworn or commissioned full-time firefighter/paramedics, lieutenant/paramedics, and lieutenant/shift commanders employed by the Village. (U. Ex. 1, Tab 1; U. Ex. 1, Tab. 9.) The Village is a municipality established pursuant to the Illinois Constitution and the Illinois Municipal Code and is an "Employer" within the meaning of section 3(o) of the Act.

.A The Village of Matteson

Matteson is located off Interstate I-57 approximately twenty-six miles south of downtown Chicago, and has 16,000 residents. It is governed by a Village president and six trustees ("Board of Trustees"). (ER. Ex. B3.) Daily operations are managed by a Village administrator. (ER. Ex. B2 at 33; ER. Ex. B3.) Various directors run the Village's municipal departments. (ER. Ex. B3.)

.B The Matteson Fire Department

The Matteson Fire Department ("MFD" or "Department") provides multiple services to the community including: fire prevention, public education, emergency medical (paramedic), fire suppression, specialized rescue and response, and administrative services. (ER. Ex. B4.) It maintains two fire stations and operates two ambulances, one fire engine, and one fire truck. (ER. Ex. B4.) The Department responds to more than 3,000 incidents per year. (ER. Ex. B4.) It operates on a typical three-shift, 24 hours on, followed by 48 hours off system. The structure of the Fire Department includes a fire chief, deputy chief, three shift commanders, five lieutenants, one of whom is assigned to the Fire Provision Bureau, and approximately twenty-three firefighter/paramedics. MFD is run by Fire Chief Edwin Wilkens. Unlike many comparable communities, firefighters and lieutenants in the bargaining unit are required to be paramedics.

MFD also provides services beyond the borders of Matteson. In addition to Matteson, the Department provides fire service to Olympia Fields, the Olympia Fields Country Club, the Timber Ridge Mobile Home Park, and several other unincorporated areas, increasing the population served by the Department for fire and emergency

services to approximately 25,000 people. (ER. Ex. B2 at 33.) The total geographic area covered by the MFD amounts to approximately nineteen square miles.

B. The Parties' Collective Bargaining History

On November 30, 1988, the Illinois State Labor Relations Board ("Board") certified Local 3086 as the exclusive bargaining agent for the bargaining unit. (U. Ex. 1, Tab. 1.) Thereafter, the Village and the Union engaged in bargaining and entered into their first Collective Bargaining Agreement, effective September 18, 1990 through April 30, 1993 ("1990-1993 Agreement"). (U. Ex. 1, Tab 2.) That first agreement was silent with respect to residency, and unit employees could live anywhere, including outside the State of Illinois.

The parties' second Collective Bargaining Agreement, effective May 1, 1993 through April 30, 1995 ("1993-1995 Agreement") was also silent on the topic of residency. (U. Ex. 1, Tab 3.) On April 18, 1994, however, the Village passed the "Matteson Employee Residency Ordinance" requiring all public safety and Public Works employees hired after April 18, 1994, to live within the municipal boundaries of Matteson. (U. Ex. 2; ER. Exs. R1, R3, R4.) During the term of the parties' third Collective Bargaining Agreement, effective May 1, 1995 through April 30, 1997 ("1995-1997 Agreement"), the Village residency ordinance remained in full force and effect. (U. Ex. 1, Tab 4.)

The parties' fourth Collective Bargaining Agreement, effective May 1, 1997 through April 30, 2001, ("1997-2001 Agreement") was, however, silent with respect to residency. (U. Ex. 1, Tab 5.) Then in July 1997, the Act was amended making residency a mandatory subject of bargaining. At that time, the parties were well into contract negotiations over the terms of their fourth contract. When the parties were

unable to reach an agreement concerning their fourth contract, they proceeded to interest arbitration before Arbitrator Herbert Berman.

One of the Union's issues at arbitration involved an attempt to modify the residency requirement. (ER. Ex. R5.) After three days of hearing, the parties reached a negotiated settlement. In exchange for the Village's wage proposal, and primarily in exchange for a 12% longevity spike, the Union agreed to drop the residency issue. It is important to the Union's position that there were only two bargaining unit employees then affected by the residency restriction. (U. Ex. 1, Tab 4; U. Ex. 1, Tab 5, Art. XIII, Sec. 13.5.) The evidence of record also reveals that the Union was also proposing work reduction "Kelly" Days during the negotiations for the 1997-2001 Agreement. As with the residency issue, the IAFF dropped its Kelly Days proposal, also apparently in exchange for the Village's wage proposal and the 12% longevity spike.

What followed between 1999 and 2001 was a period of back and forth between the Village and employees regarding residency. According to Village Attorney Kramer, by 1999, employee opposition to residency from all the organized bargaining units picked up steam, and they made a push for a loosening of the residency restriction. Public Works had organized and were seeking to eliminate it in their contract negotiations. The police were also in negotiations in 1999, and sought to eliminate residency. Opponents of in-town residency gained more support on the Village Board.

In October 1999, the Village Board held a heated workshop meeting to hear employees and residents on the residency issue. (ER. Ex. 6). Residents and employees spoke for and against the residency rule. (ER. Ex. 6). Homeowners'

associations spoke out in favor of residency. Trustees spoke in favor of and against the ordinance.

One result of the workshop ultimately was the decision by the Village to ask the residents their thoughts about the issue. Thus, in December 1999, in the midst of contract negotiations with the police and Public Works, the Village passed an ordinance putting forth non-binding Referendum 1749, which specifically asked Village residents whether the Village should continue to require in-town residency for all full-time sworn police officers, supervisors and command staff, community service officers, sworn firefighter/paramedics, Public Works maintenance workers, foremen, mechanics and supervisors hired after the date of the ordinance. (ER. Ex. 7).

At the time Referendum 1749 was adopted, some employees expressed opposition to the wording. Consequently, a petition was circulated among the residents to put a second referendum regarding residency on the ballot. Even though not enough signatures were obtained to put the second referendum on the ballot, the Board voted to place it on the ballot. (ER. Ex. 8). Referendum 1751 asked whether Village employees subject to emergency recall should be required to live a reasonable distance, fifteen (15) miles from the Matteson corporate boundaries, within 18 months of completion of their probation. (ER. Ex. 8).

With the two referenda on the ballot, the battle was joined and the campaign for hearts and minds waged. Some Village employees, for example, circulated campaign materials supporting expanded residency. (ER. Ex. 9).

In the March 2000 election, Village residents voted "yes" to residency. (ER. Ex. 10). However, because residents voted "yes" to both referenda, they

complicated exactly what type of residency they preferred. As to Referendum 1749, 1,217 residents voted "yes" and 558 voted "no." As to Referendum 1751, 1,301 residents voted "yes" and 374 voted "no". Clearly however, by a vast majority, Matteson residents had spoken out in support of requiring emergency responders to live very close to – if not in – the Village limits. (ER. Ex. 10).

The Public Works negotiations were the first negotiations to be resolved after the referenda. The Public Works employees, who have the ability to strike, agreed to comply with Village residency requirements as a condition of employment. (ER. Ex. 11). However, the parties agreed to a "me-too" provision that their bargaining unit residency requirements would be no more restrictive than those for non-bargaining unit Parks and Public Works foremen and superintendents (ER. Ex 11).

The Police Department's patrol officer negotiations, which had begun in 1999, were the next to settle. Residency had been the major sticking point that had hindered ratification of the contract. The Village bargaining team spent hours agonizing over how to reach a reasonable compromise with the police regarding residency. Police concerns over residency included the bargaining unit members' desire for more options in the choice and standard of living conditions. The police also raised a safety issue in that they did not want to live in the same town as the people they had to arrest because they feared retaliation. The Village's considerations included its operational concerns for all of the public safety departments that were subject to emergency callout.

The Village's position in the 1999 police officer negotiations, according to Village Attorney Kramer's narrative at this hearing, was that emergency responders needed to live close by in order to effectively respond to the frequent emergency callouts. The

Village also had to consider the strong public interest in in-town residency demonstrated by the referenda, and the political ramifications of expanding residency.

The Village also had to consider the practical issues of possibly expanding residency, Employer Attorney Kramer narrated at hearing in the current case. The Village had to address just how to define such a residency area if it was going to expand it beyond Village limits. If the residency area was to be defined by a radius, from what point should it start? Should the residency area be a definable square marked by streets, or maybe a listing of towns? If a listing of towns, what communities should be in or out?

By December 2000, after much negotiation and internal deliberation, the Village had moved in its proposals to a proposed square of about five miles wide from each side of the center of town. The Fraternal Order of Police-Illinois FOP Labor Council ("FOP")-wanted more. Both sides needed to claim they obtained their objective. The final compromise: the patrol officers represented by the FOP and the Village ratified an agreement with a five-mile square residency footprint from the center of the Village, with any incorporated municipality whose borders touched the footprint counted as within the footprint. (ER. Ex 12 at 44). That way, the Village bargaining team could report that it had negotiated a limited expansion, yet the FOP bargaining team could rightfully report it obtained more than the square. In terms of wages, the parties agreed to step increases of 3% -3 ½%. (ER. Ex. A – Agreement between Matteson and FOP, May 1, 1999 – April 30, 2003 at §16.1). In February 2001, the contract with the new residency footprint was signed. (ER. Ex. A - Agreement between Matteson and FOP, May 1, 1999, p. 47).

C. 2001 Fire Negotiations

In January 2001, bargaining for the new fire contract began. The parties held four bargaining sessions and two mediations. All of the proposals were off the record at that time and, although several tentative agreements were reached, the parties could not reach an overall agreement. It appeared that the parties would have to go to interest arbitration, and they selected Milo Flaten as Arbitrator.

In July 2001, the Union submitted its first on-the-record proposal in preparation for arbitration. (ER. Ex. 13). The firefighters wanted a three year contract with wage increases of 4%, 4 ¼%, and 4 ½%. As to residency, the Union proposed a new square border with Route 17 to the south, Route 56 / Cermak to the north, the Indiana border to the east, and Route 47 to the West. The result: a huge area 48 miles east to west and 51 miles north to south that would actually expand residency to approximately 2448 square miles of space. (ER. Ex. 13 at 3).

On July 23, 2001, the Village submitted its first on-the-record proposal. (ER. Ex. 14). The proposal included a four year contract with 3 ½% wage increases across the Board, as opposed to the Union's proposed three year contract with 4 - 4 ½% increases. The Village tied a package to its proposal that, if the Union was willing to drop its proposals and accept all of the Village proposals (or some other mutually agreeable language) before the end of the first day of arbitration, the Village would agree to the same residency language agreed upon in the police contract as *quid pro quo* for acceptance of the Village proposals. (ER. Ex. 14, p. 2). Thus, on the eve of arbitration, the Union wanted a greater residency area and more money with a shorter term, and the Village wanted 3 ½% wage increases, a four year term, and the same residency area that had been negotiated with the police.

Settlement was eventually reached through the efforts of Village Administrator David Mekarski, who had just been hired in March 2001. Mekarski wanted to reach a compromise without arbitrating, and was prepared to spend the political capital new managers have with Village Boards during their "honeymoon period" to do it. Mekarski also subscribed to what he referred to as "leaps of faith" in bargaining, and he wanted to take one of those leaps of faith with the firefighters. As Mekarski was willing to go back to the Board for more residency authority in order to reach a negotiated settlement, the Village bargaining team went back to their maps and further explored residency expansion options.

The Village and the Union returned to the table, this time without attorneys, and were able to reach a final agreement. The residency agreement reached, the current *status quo* provides in pertinent part:

SECTION 17.12 RESIDENCY

As a condition of employment, all employees who are hired on or after April 18, 1994 shall, within eighteen months of the beginning of their term of employment and continuously thereafter, reside within the following streets: the Indiana border to the East, Farrell/Cherry Hill Road to the West, 127th Street to the North, and Eagle Lake Road to the South. Employees hired prior to April 18, 1994 may reside anywhere that is consistent with the rule in effect at the time they were hired.

(ER. Ex. 15 at §17.21).

The residency footprint which the firefighters negotiated was much broader than that negotiated by the police, the record evidence indicates. As opposed to a ten-mile square (five miles from each side of the center of town) of about 100 square miles to which the police agreed, the firefighters received a 20-by-25 mile area that provided a residency footprint of approximately 500 square miles - *five times* the size of the negotiated police footprint. (ER. Ex. 15)

Additionally, as part of the agreement, in a side letter the Union agreed not to raise residency in the successor agreement. (ER. Ex. 15, Village Letter, No. 9). Employer counsel Kramer maintains that the purpose of the side letter agreement was to give the Village some peace after the prolonged and contentious period of residency wars had ended in resolution, not only with respect to the firefighters, but hopefully for all of the Village's bargaining units.

As further *quid pro quo* for resolving residency, Kramer also said at this hearing, the Village also agreed to a brand new emergency callback response incentive. (ER. Ex. 15, Village Letter, No. 9). The emergency callback response incentive provides that if an employee responds to 30% of the emergency callback requests in a year, he receives a \$1,000 contribution to his Section 457 account. If an employee responds to 50% of the emergency callback requests, he receives a \$2,500 contribution to his Section 457 account. Not only was the emergency callback response incentive a brand new benefit, the firefighters were the only bargaining unit to receive it. No comparable community has such a benefit. (U. Ex. 8 at tab 1-12).

As even more *quid pro quo* to the Union, the Village agreed to double-time pay for the first two hours of any emergency callback. (ER. Ex. 15, Village Letter, No. 13). The previous language only provided for time and a half. The Village also agreed to a three-year contract as opposed to the four-year contract it proposed, and a 4% per year wage increase – increases greater than the 3 ½% it wanted, increases greater than what the police had agreed upon. Thus, in 2001, the parties entered a contract where the firefighters not only received a larger residency footprint than any other bargaining unit at the time, they also received a new economic benefit in the form of the emergency

callback response incentive, double time for emergency callbacks, and higher annual wage increases than the police received or the Village offered.

After reaching these tentative agreements, the Village bargaining team then had to go to the Village Board for approval. At the first Village Board meeting where the new proposed fire contract was raised, the Board refused to vote on it and asked for justification for all of the concessions the Village was providing. At the second meeting, the Board ratified the agreement.

After these parties, the IAFF and the Village reached their agreement on the 2001-2004 Labor Agreement, *The Star*, a local newspaper, published an article about those contract negotiations stating, "Wages and residency requirements propelled the lengthy process and delayed ratification of the three-year contract." (U. Ex. 3.) *The Star* article quoted then Fire Chief Wilcox who said, "Residency requirements for Village employees remains at the forefront of collective bargaining for contracts in many communities." The article also quoted then, and current, Village President Mark Stricker who said, "It is freedom of choice. ... Employees should be able to live where they choose. In every other occupation, people have the right to choose where they live." The article also includes remarks of then, and current, Trustee Nathaniel Motton Jr., as well, who said in part, "I do not think we can trap employees with residency requirements. There is no way we can force anyone to live somewhere. People should have a choice of where they live."

Subsequently, the parties entered into their sixth Collective Bargaining Agreement, effective May 1, 2004 through April 30, 2007 ("2004-2007 Agreement"). (U. Ex. 1, Tab 12.) The residency requirement remained unchanged, consistent with

the side letter agreement attached to the 2001-2004 Agreement. Bargaining unit employees hired after April 18, 1994, are currently subject to residing within the previously established boundaries.

D. Standardizing of the Residency Footprint

Employer Attorney Kramer, in his narrative at this hearing, explained that, in the interest of fairness, the Village went back to the FOP and offered this same larger residency footprint that it granted the firefighters. As *quid pro quo*, Employer Counsel Kramer asserted, the Village wanted an extended police contract with reasonable rates, and an agreement not to renegotiate residency. The FOP agreed, by agreeing to a successor agreement at the same time with indexed pay increases to follow the contract it was in. (ER. Ex. A, 2002-03 FOP CBA p. 46, 2003-06 FOP CBA pp. 30-31, 47). However, the police officers in the FOP unit did not receive the emergency callback response incentive that was given to the firefighters, Kramer emphasized.²

The Village then revised the residency ordinance so that all public safety employees, Public Works and managers had the same residency area.³ At that point, the Village believed that the residency battle was over, Kramer stated in his narrative. The Village had negotiated residency in good faith with all of the parties and made many compromises along the way to reach the residency agreement, he suggested. Particularly with respect to the firefighters, the Village paid a high price in the form of wages, emergency callback response incentive, double time callback, and expanded

² The record shows that in 2005, the Patrol Officer Bargaining Unit changed its representation from the FOP to the Metropolitan Alliance of Police (MAP). A second police unit, consisting of police sergeants, already had been designated that year and is represented by MAP.

³ Department Heads to this day are required to maintain residency within the Village. .

residency area in exchange for the residency footprint to which the parties ultimately agreed, Kramer concluded.

E. The Events That Led To The Instant Matter

1. The Meeting with the Human Resource Director

During the Summer of 2006, the parties signed a side agreement pertaining to recognition of lieutenant/shift commanders as members of the bargaining unit. (U. Ex. 1, Tab 9.) At that time, the Village's then Human Resource Director, Robert Crouch, wanted to know whether there were going to be any issues in the upcoming contract negotiations that were of great importance to the Union that he ought to start presenting to the Village Board. On July 31, 2006, at approximately 2 p.m., President Anello met with Human Resource Director Crouch and informed him that residency would be the single largest issue driving the negotiations. (U. Ex. 4.) Then Union President Anello also brought with him to that meeting a document dated 7/29/2006 showing the boundaries of the residential zone under the *status quo* language of the expired 2004-2007 Agreement and a seniority roster to demonstrate which bargaining unit employees were covered under the residency restriction and which employees were not subject to a residency requirement. (U. Ex. 9.) President Anello, a twenty-three year veteran in the MFD, updated Mr. Crouch as to the history of residency in the Village and informed him of what "[the Union's] stance was going to be [in the] next contract negotiations, that [the Union] wanted to loosen, if not eliminate, residency and that would be a major topic that would hold up the ratification of the following contract." Crouch responded that he would look into the matter.

2. The 2006-2007 Negotiations

As already mentioned, on December 27, 2006, Local 3086 President Sam Anello wrote the Village requesting negotiations over the terms of a successor agreement to the 2004-2007 Agreement. (U. Ex. 1, Tab. 10.) The parties met without lawyers being present. The teams engaged in approximately nine bargaining sessions, starting in January 2007 and ending on June 15, 2007, at which time the parties declared impasse. The dates of the sessions were January 12, January 23, January 30, March 13, April 11, April 19, May 22, June 5, and June 15, 2007.

The evidence discloses that the Union's initial proposal, consistent with President Anello's notification to the Village's human resource director, indicated that residency was of great importance to Local 3086 and suggested the following language, "No employee covered by this Agreement shall be subject to any residency requirement." (U. Ex. 1, Tab 12, Packet 2, Sec. 17.2.) In its second proposal dealing with non-economic items, the Union again suggested the same language. (U. Ex. 1, Tab 12, Packet 5, Sec. 17.12.) Throughout the negotiations, the Union was unequivocal that it was seeking an end to the residency requirement. (U. Ex. 1, Tab 12, Packets 2, 5.)

The Village, on the other hand, continued to propose *status quo* language, limiting residency to the boundaries set forth in the 2001-2004 and 2004-2007 Agreements. (U. Ex. 1, Tab 13.) The Village's initial proposal, dated March 13, 2007, reflected no change in the residency provision. (U. Ex. 1, Tab 13, Packet 2 at 23.) In its proposal dated April 11, 2007, the Village also proposed the *status quo*. (U. Ex. 1, Tab 13, Packet 3 at 7.) At each of the bargaining sessions where residency was a topic, the Village maintained that it would not change its position on the residency issue, that the issue was political, and that its bargaining team did not have authority to

discuss the matter. Ultimately, the Union was told by Kathy Murray, the Village's Chief negotiator, that the Village Board had unanimously determined that it would not modify the residency requirement.

In June 2007, the parties were down to two issues in negotiations, wages and residency. (U. Ex. 1, Tab 14.) At this point, the Union decided to poll its members to determine whether the issue of residency continued to be the primary issue that needed to be resolved and whether the Union needed to pursue the issue in interest arbitration. On June 14, 2007, one day before impasse was reached, the Union held a meeting and polled its membership. The Union presented the agreement reached by the parties on all remaining issues together with an off-the record wage proposal and the *status quo* residency provision. (U. Ex. 1, Tab 15.) Twenty-four votes were cast. Of those cast, all except for three individuals insisted that residency was the single-most important issue for the Union to resolve in this contract negotiation. Of the three individuals for whom the *status quo* remained acceptable, none are subject to the residency restriction and all three can and do live wherever they want.

On June 15, 2007, the parties met, and the Union reported that residency continued to be the foremost issue requiring resolution in the contract negotiations. During this meeting, the parties declared impasse and agreed to waive mediation, as required by the Act, and to proceed to interest arbitration.

3. The Village Board Meetings During Contract Negotiations

During the pendency of the most current contract negotiations, two different Village Board meetings were held in Summer 2007 where some trustees expressed support for the Union's philosophy that employees should be able to live where they choose and that residency requirements are a thing of the past. At the July 16, 2007

meeting, the Village Budget Officer Greg Meyers ("Meyers") explained that he was submitting his resignation due to the Village's residency requirement. (U. Ex. 5, Tab. 6 at 6.) As a department head, his employment agreement required that he move into the Village within one year of hiring. (U. Ex. 6; ER. Ex. R17.) In response to Meyers announcement, Trustee Andre Ashmore said:

Things do change . . . residency requirements are really already a thing of the past . . . There really is no longer really any proof that we get more bang for our buck by really requiring this . . . We need to take a look at it and stop kidding ourselves and really get rid of it altogether.

(U. Ex. 5, Tab 6; U. Ex. 6.)⁴

At the August 6, 2007 Board of Trustees meeting, the issue of residency was again discussed. (U. Ex. 5, Tab 7, U. Ex. 7.) The Village Board was considering issuing an engagement letter to retain the services of the PAR Group, public Management consultants, to assist the Village in the recruitment of directors of community development and human resources. (U. Ex. 5, Tab 7 at 4; U. Ex. 7.) According to the meeting minutes, "Mr. Robert Besack of the PAR Group stated that he may not be successful in focusing his recruitment efforts only on candidates who live in the Village as the Village Ordinance requires. He asked if the Board would consider removing the residency requirement from the recruitment efforts." (U. Ex. 5, Tab 7 at 4.)

In response to Mr. Besack's assessment of the potential limitations caused by the Village's residency requirement, Trustee Ashmore commented, "As we all know, we have a lot of varied feelings about residency up here. I still believe . . . it is soon to be a thing of the past and should be." (U. Ex. 7.)⁵ Soon after, President Stricker said,

⁴ These statements occurred at approximately 1 hour and 43 minutes into the meeting. (U. Ex. 6.)

⁵ These comments occurred approximately 41 minutes into the meeting (U. Ex. 7.)

"I have to concur with . . . Trustee Ashmore, in the sense that the residency issue is becoming an antique. It doesn't prevail in other occupations."

The record evidence reflects that in the 2007 fire contract negotiations, the parties were able to reach tentative agreements on all issues except residency. (ER. Ex. B10-11). Many of the issues raised and agreements to modify the contract reached were initiated by the Union. (ER. Ex. B10-11). As Management sees it, the Union in those negotiations achieved a major accord on an issue it had pursued since the Union began. Despite the bargaining history of strong Village opposition to Kelly Days, the Village and the employees were able to work out a major accord in that regard, and the Village also provided the Union new holiday pay benefits. (ER. Ex. B11). The parties agreed to one Kelly Day every twelfth shift, 10.14 Kelly Days annually, in exchange for the current nine paid floating holidays off and for Christmas Eve pay. Thus, the Union received an increase of 1.14 days off. (ER. Ex. B11).

Further, the Village agreed to pay 12 hours of pay for each holiday actually worked, which comes out to 28 additional hours of pay (after subtracting the Christmas Eve pay and assuming each employee worked 1/3 of the holidays), or .96% of salary. (ER. Ex. B11). These Village concessions also increased the firefighters' hourly overtime rate by 8.6%, because in the previous contract they had 2,912 hours worked per year, and under the 2007 tentative agreements they would work 2,679 hours per year for the purposes of calculating overtime. (ER. Ex. B11).

Based on the clear message from its members that residency was the issue driving bargaining by it in the 2007 negotiations, the Union continued to pursue

residency and to maintain its on-the-record proposals that these parties completely abandon any limits on residency. (ER. Ex. B11).

The reason for this position, Union Counsel Moss stressed at hearing, was that the *status quo* residency restriction affects employees differently depending on when they were hired, because two different rules apply to firefighters. According to the seniority list dated January 12, 2007, Moss emphasizes, there are thirty members in the bargaining unit.⁶ (U. Ex. 5, Tab. 4.) Employees numbered one through ten on the January 12, 2007 Seniority List, excluding Pat Gericke, are able to live anywhere they choose, including out of state, based on the absence of a residency restriction on their date of hire.⁷ Of those nine, three employees actually do live outside of the current residential zone. William Mincey (“Mincey”) lives in Coal City. (U. Ex. 5, Tab 5.) Daniel Kukulski (“Kukulski”) lives in Crown Point, Indiana, and Edward Leeson (“Leeson”) lives in Manteno.

Employees with seniority numbered 11 through 31, however, must live within the current residential zone, as they are subject to the residency requirement of the *status quo*. When Gerald Irwin and Chris Schwalbe, numbers 11 and 12, initially tested, there was no residency requirement, but by the time they were hired, each was subject to the residency restriction. Even under the *status quo*, employees’ residences are spread all over, the Union submits. There are no operational reasons to maintain this hot button issue in this Village, the Union further argues. (U. Ex. 5, Tab 5.)

⁶ Pat Gericke, listed as number two in seniority, has since been promoted to deputy chief, and thus, is no longer a member of the bargaining unit.

⁷ Of those 9 bargaining unit employees who can live anywhere without restriction, 5 are lieutenants and 2 are shift commanders. (U. Ex. 5, Tab 4.)

4. Emergency Callback Response Incentive

The parties strongly disagree as to the issue of whether any change in the current residency rule would adversely affect the Village's present ability to respond to emergencies by use of callback response from the bargaining unit's off-duty full-time firefighters. To Management, a "state-wide" residency provision would drastically and negatively impact prompt emergency callback response. To the Union, however, the facts of record do not support this Management contention. Because of the importance of this factual difference, some time will be devoted to both parties' positions on the callback issue.

(a) The Union's Position

Emergency callbacks occur when a lieutenant, shift commander, the fire chief, or deputy fire chief determines that additional employees are needed to respond to an emergency. Callbacks may be initiated due to a structural fire in the Village, in support of another community, or as a response to a disaster or storm. While the Village has the right to mandate emergency callbacks, this rarely occurs. For the most part, callbacks are handled on a voluntary basis. Accordingly, the "Emergency Callback Response Incentive" provision of the 2004-2007 Agreement provides:

In order to adequately serve and protect the residents and property of the Village, the Village relies upon its off-duty employees to respond to emergency callbacks. To facilitate this employees have been issued pagers. The Union shall cooperate with the Chief to encourage sufficient employees to respond when needed. Employees who respond to emergency callback requests will be eligible for a one time non-cumulative bonus payable at the end of each Fiscal Year as follows: Employees who respond to thirty percent (30%) of emergency callback requests will receive a \$1,000 contribution to their 457 account. Employees who respond to fifty percent (50%) of emergency callback requests will receive a \$2,500 contribution to their 457 account. Nothing in this Section is meant to diminish the Village's right to enforce reasonable rules, orders, or policies relating to emergency callbacks.

(U. Ex. 1, Tab 7, Art. IV, Sec. 4.10 at 9.) Thus, the contract provides incentive pay depending upon the percentage of callbacks to which employees respond.

Comparison between where an employee lives and the number of callbacks that an employee responds to demonstrates that there is no correlation. The MFD calculates callback percentages to determine which employees receive emergency callback response incentive pay. (U. Ex. 13.) In fiscal year 2003-2004, Mincey, Leeson, and Kukulski, all of whom live outside the current residential zone, responded to 150%⁸, 82%, and 64% of callbacks, respectively. (U. Ex. 13.) In fiscal year 2004-2005, Mincey, Leeson, and Kukulski responded to 50%, 88%, and 60% of callbacks, respectively. In fiscal year 2006-2007, Leeson, who lives in Monteno, responded to 74% of callbacks. (U. Ex. 13.) By contrast, in fiscal year 2004-2005, Angelo Brown, who lives in Matteson, responded to 31% of callbacks, and in fiscal year 2006-2007, he responded to just 6% of callbacks. (U. Ex. 13.) Thus, in some instances, employees who live outside the current residential zone actually respond more often to callbacks than employees who live in Matteson. (U. Ex. 13; U. Ex. 5, Tab 5.)

(b) The Village's Position

The Village Board originally adopted the in-town residency requirement in 1994 for the express purpose of emergency response: “[I]n order to insure availability of personnel for prompt response to emergency situations, it is desirable that persons employed in certain positions subject to emergency callout reside within the Village.”

⁸ Based on then Chief Wilkens' explanation, it is possible that the percent of alarms answered for a given period will exceed 100%, depending upon the total number of calls that were answered. (U. Ex. 13.)

(ER. Ex. 1). While the Village has agreed to a residency footprint instead, the primary operational concern underlying the Village's residency footprint is the need for its public safety emergency responders to get back to the Village in the event of an emergency callback. The fact remains that an expansion of the footprint would unnecessarily impair the Village's ability to protect the health and safety of its residents, and to protect property.

The Village relies on emergency callbacks on a regular basis. (ER. Ex. 21). Indeed, the need for emergency callbacks has increased over the years. Notably, when employees are called back on emergency callbacks, often it is their fellow bargaining unit members, serving as shift commanders and lieutenants, who have decided in their professional opinion they *need* more firefighters back in-town to preserve lives and protect property.⁹ When the Village Fire Department issues an emergency callback, whether to a shift or to an entire department, emergency responders need to get back as soon as possible in order to protect the Village. They are not needed the next day or the next week, they are needed now.

The Village takes emergency callbacks very seriously. All employees are issued pagers, and employees who live in town are offered tone pagers so they can hear the calls as they actually are made and can begin to respond immediately without waiting for the page. While it currently generally only utilizes voluntarily emergency callbacks, the Village has always reserved the right to mandate, and indeed has on occasion. It prefers the voluntary method (provided it works); after all, employees are expected to report for emergency callbacks and have a professional obligation to do so.

⁹ It is important to note that emergency callbacks are not situations where an employee calls in sick, and the Village is trying to find someone to take their place; or having someone come back to do public education or inspections.

The Village additionally relies on the officers issuing the emergency callouts to call out sufficient numbers of firefighters so that the numbers who actually respond are sufficient. Indeed, with the amount of money the Village agreed to pay for emergency callouts both in terms of double time and emergency response incentive, it should never have to fear not having sufficient volunteers.

Granted, the Village is party to mutual aid and automatic aid agreements whereby it seeks the assistance from other departments when it needs additional manpower. (ER. Ex. B9). This is a valuable resource, and the Village does not hesitate to use it. But these arrangements have their limits, and the Village needs its own firefighters back on emergency callback to fill in the gaps, as the following explains:

1. Mutual and automatic aid is voluntary, and not necessarily prompt.

The first major drawback to the mutual and automatic aid process is that it is voluntary. If other communities' Fire Departments are already busy, they will not respond to a mutual or automatic aid alarm from the Village. Incidents of other communities being otherwise occupied with emergencies in their own towns and unavailable to respond to Village mutual or automatic aid calls are common. The Village of Matteson will not respond to a mutual or automatic aid alarm if the Village's Fire Department has even a single ambulance out on a call. Other towns' mutual and automatic aid policies are similarly stringent, because their primary function is to protect their own communities.

Unavailability of neighboring towns to respond to an alarm does not mean that no community will respond. However, when closer communities are unavailable, dispatchers seeking mutual or automatic aid for the Village must work their way down a list of communities, going further and further from Matteson, thus increasing the amount

of time it will take for aid to arrive and making it uncertain whether enough personnel from other communities will respond. (ER. Ex. 22).

2. Mutual and automatic aid can easily be overloaded by regional problems that impact multiple communities.

The second problem with respect to mutual and automatic aid is that it can be easily overloaded when the nature of the service calls arising within the Village is tied to regional problems rather than Matteson-specific issues. When Matteson and its neighbors are all facing the same problems at the same time – storms, snow, heavy winds, lightening strikes, tornados or any other event threatening the entire region – call levels are raised not only in Matteson but in the other communities as well, effectively rendering mutual or automatic aid from those communities unavailable to the Village. Other man-made regional emergencies, such as hazmat incidents, toxic fumes, chemical spills, plane crashes or terrorist attacks can also so adversely impact mutual or automatic aid responses that the Village would be unable to rely on any prompt or effective aid from the nearby communities faced with the same emergency.

Notably, the Village has mandated emergency callbacks in these situations. For example, in 2005 a major snow storm came through that crippled the ability of snow plows to keep streets clear. The Department realized that the weather was getting so bad that, not only could it not rely on mutual aid, but it might not even be able to rely on its second fire station to make it to a call in the first station's response area. Because in that situation there simply was no guarantee that mutual aid would be able to help, Fire Chief Wilkens ordered everyone in on a mandatory emergency callback. The Chief wanted the full personnel available as soon as possible to protect the Village during this weather event.

Similarly, in 2006 the region experienced severe storms that led to flooding. The Village has viaducts in town that become impassible in flooding situations, making it difficult for the Village fire stations to cover each other or for other towns to respond. Again the Department decided that in this situation it simply could not rely on mutual aid to respond in an efficient manner, because many of the neighboring communities were facing the same crises as the Village. In this instance the Chief again mandated that all personnel respond to an emergency callback and come in as soon as possible in order to protect the Village. Both of these examples illustrate that the Village cannot rely totally on mutual or automatic aid to respond to Village emergencies, and, as such, emergency callback response and response time are of the utmost importance in ensuring the safety of Village residents and property.

3. Matteson firefighters are better able to service the Village since they are most familiar with it and Department operational practices, and their arrival can hasten the ability of mutual aid companies to return to protect their own communities.

Further, the Village's own personnel are the best possible responders to a Village emergency. They know the streets, and how to get to Village locations in the quickest way possible. They should know, for example, which viaducts might be flooded. They also know the types of buildings and structures that are in the Village and how to best attack them from a firefighting standpoint. This is not necessarily true of mutual aid responders. The consequences of emergency responders who are otherwise highly qualified but, for example, simply not familiar with the area, can cause serious problems -- as inferred from the incident which occurred during the Chicago Marathon. (ER. Ex. 24).

Thus, even when the Department calls in mutual aid, and sufficient units respond to help fight the fire and also man the Department's empty stations, the Department wants employees who respond to the emergency callback. They may get back sooner, and even if they do not, the Department can utilize them: (i) to fight the fire, thus permitting, to the extent the Department no longer requires their services, the mutual aid companies to return promptly to protect their own communities; (ii) man the empty stations to respond to other Matteson service calls, thus permitting the mutual aid units at the stations to return to protect their towns; and/or (iii) assuming the Department lacks the equipment to staff its own stations given the ongoing fire, Department employees can ride along with the mutual aid companies staffing the station to make sure they know where they are going and provide any necessary localized knowledge needed for the call.

4. Mutual and automatic aid is a two-way street, and when the Village is providing mutual aid it is supposed to be able to protect its own.

The final drawback to mutual and automatic aid is that it is a two-way street. It is important to note that the Village responds to mutual aid quite often, and indeed gives more than mutual aid than it receives. (ER. Ex. 23). When the Village responds to mutual aid, if the call is for an engine, it must send four people. With maximum staffing the Village has 10 people on shift. However, on many occasions given the additional Kelly Days and other vacation, sick and personal time off, the stations may be staffed with only eight or nine people. At that level of staffing an emergency call for an engine can empty one station. While that station is vacant, if the Village does not fill the station with its own personnel, half of the town is left with no emergency coverage out of that

station. The remaining station must drive across town to respond to the vacant stations calls – assuming the station is not responding to calls of its own.

The Village cannot rely on mutual aid to come in and fill the empty station. The rules governing mutual and automatic aid dictate that, when responding to a call for mutual aid, a Village should not then be calling in for someone else to then provide mutual aid for them. The idea behind mutual and automatic aid is that a community is supposed to be able to provide aid and still protect its own community. Consequently, when a Village engine is out on a call providing mutual aid, and it appears the engine will be out for a period of time, or another call comes through, the shift commander or other authorized member on duty will issue an emergency callback to staff the empty station and ensure that it can respond to emergency service in the area covered by that station within the four to six minute time frame recommended for responding to alarm emergencies. (ER. Ex. 22).

Thus, even with mutual or automatic aid in place, prompt emergency callback response is still a fundamental and necessary operational practice that mutual aid cannot completely replace. It is an indisputable operational fact that the closer someone lives to the Village, the quicker they can respond to an emergency callback. (ER. Ex. 20). Thus, even in light of mutual or automatic aid agreements, the Village believes that maintaining the *status quo* footprint is still in the best interests and welfare of the public that the Fire Department is sworn to serve.

III. THE PARTIES' FINAL PROPOSALS

The Union's pre-hearing proposal is as follows:

**ARTICLE XVII
GENERAL PROVISIONS**

Section 17.12 Residency

As a condition of employment, all employees hired on or after April 18, 1994 shall, within six months after the completion of their probationary period and continuously thereafter, reside within the State of Illinois.

(U. Ex. 5, Tab. 1.)

The Village's pre-hearing proposal is as follows:

Residency. *Status Quo.*

Section 17.12

As a condition of employment, all employees who are hired on or after April 18, 1994 shall, within eighteen months of the beginning of their term of employment and continuously thereafter, reside within the following streets: the Indiana border to the East, Farrell/Cherry Hill Road to the West, 127th Street to the North, and Eagle Lake Road to the South. Employees hired prior to April 18, 1994 may reside anywhere that is consistent with the rule in effect at the time they were hired.

The eighteen (18) month period described in this section shall begin on the effective date of employment, notwithstanding that at the time of the commencement of the employee's hiring, the employment shall be contingent upon any required probationary period.

(U. Ex. 5, Tab 2.)

On January 10, 2008, the Village modified its pre-hearing proposal, which was rejected by Local 3086, as follows:

1. Revise section 17.12 to read as follows:

Section 17.12 Residency

As a condition of employment, all employees who are hired on or after April 18, 1994 shall, within twenty-four (24) months of the bargaining of their term of employment and continuously thereafter, reside within the following streets and those incorporated municipalities which cross over those streets) other than Chicago, Joliet or any Indiana community): the Indiana border to the East, Farrell/Cherry Hill Road to the West, 127th Street to the North, and Eagle Lake Road to the South. Employees hired prior to April

18, 1994 may reside anywhere that is consistent with the rule in effect at the time they were hired.

The twenty-four (24) month period described in this section shall begin on the effective date of employment, notwithstanding that at the time of the commencement of the employee's hiring, the employment shall be contingent upon any required probationary period.

2. Add side letter of agreement to read as follows:

SIDE LETTER OF AGREEMENT REGARDING RESIDENCY PROVISION

The parties have agreed to modify the residency requirements as described in Section 17.12 of the agreement. The parties further agree that such residency requirements shall remain in effect for the additional period of the term of the successor agreement to the 2007-11 agreement, and shall not be a subject of bargaining in negotiations as to that successor agreement unless the Village has extended the residency boundaries for any other sworn employees in the Fire or Police Departments beyond those set forth in Section 17.12. Nothing in this Side Letter shall be construed as limiting the Union's right to bargain as to the subject of residency after the term of the successor agreement to the 2007-11 agreement.

During the course of negotiating Section 17.12, the parties assumed that Beecher corporate limits crossed over Eagle Lake Road. Concerns have been raised, however, that in actuality Beecher's corporate limits may currently run adjacent to Eagle Lake Road, and thus the community would fall outside the residency area. Given the parties had assumed Beecher did cross over, however, the parties hereby agree to treat Beecher as having crossed over Eagle Lake Road regardless of whether that ultimately is the case.¹⁰

(ER. Ex. R. 35.)

IV. RELEVANT STATUTORY LANGUAGE

Section 14(h) of the Act provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the

¹⁰ In bargaining for the current contract, the Union sought to modify the time frame from the current 18 months to in essence 24 months in the event that any residency rule was maintained. This was so, it argues, because no bargaining unit member should be forced to move to a "residency zone" prior to the completion of his/her probationary period. The Village's modified proposal now accepts the 24-month concept, the parties agree. (ER. Ex. R35.)

arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

5 ILCS 315/14(h).

Section 14(i) of the Act provides in relevant part:

In the case of firefighter and Fire Department ... matters, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois)

5 ILCS 315/14(i)

V. CONTENTIONS OF THE PARTIES

VI. The Village

The process to get to the *status quo* on residency was long, painful and expensive. However the Village thought it was worth it to put the residency issue to rest by virtue of the 2001-2004 labor contract. The then new residency footprint was bought

and paid for with more than sufficient consideration – assuming the Village even needed consideration to negotiate away the in-town residency it already had. Employees got free range to roam over 500 square miles of the “Southland,” and the Village got some guarantee that employees would live close enough to respond promptly to emergency callbacks.¹¹ Peace, at least as to residency, settled upon the Village, Management says.

The Fire Department makes it very clear to job applicants that, as a condition of their employment, they must live within the residency footprint. (ER. Ex. 8). New potential and actual hires are also informed of the residency requirement in their offer letters as well as their initial meeting with the Fire Chief. All employees subject to the residency footprint either accepted it at the time of their hire, knowing it was a condition of employment, or they accepted in-town residency as a condition of hire at time of employment – and all Village fire personnel are, to the Village’s knowledge, in compliance with the residency terms of the contract.

The residency peace ended with the 2007 fire contract negotiations, the Employer therefore urges. The parties negotiated without attorneys present. After two successor contracts following the 2001 contract codifying the current *status quo* residency footprint, and as soon as theoretically possible in light of the 2001 side letter agreement not to bargain it, the Union nevertheless again raised residency. The Union also again made Kelly Days a major issue.

The Union never explained how the residency area they agreed to six years ago was broken, other than to mention wanting more housing and schooling choices, and

¹¹ Frankly, current Fire Chief Wilkins believes, from an operational standpoint, the footprint may be a bit too big given response times. He prefers that employees be within 10-15 minutes from town. But a deal is a deal.

never explained how anything had changed in the last six years as to those issues that now made the *status quo* residency footprint a problem. The Union further made no attempt on-the-record to propose anything less than a complete abandonment of residency.

According to the Employer, the Union is asking for the entire world (in this case, literally the entire state) without offering anything in return. The Union has made no real proposal with regard to residency than it had proposed prior to arbitration in 2001. (ER. Ex.13, p. 3). The Village believes that the justifications are meritless which the Union proffers for yet another change in residency.

Additionally, I am reminded by Management that "interest arbitration is by its very nature a conservative process," an idea adopted by me in several cases to be cited and discussed later. Therefore, the party seeking to significantly change the *status quo* has the burden of demonstrating why the Arbitrator should award a "breakthrough" when the parties did not agree to it themselves.¹² In particular, the party proposing a "breakthrough" must show that: (1) there is a substantial and compelling need for the proposed change; (2) the *status quo* has failed to work; (3) the *status quo* has operated in such a way that it has caused inequities for the bargaining unit; (4) the other party has resisted attempts to bargain changes to the *status quo*; and (5) the proponent has offered a *quid pro quo* for the proposed change. Univ. of Ill. at Springfield, S-MA-00-282 at 8 (Perkovich, 2002) (citations omitted). Stated another way, "if it ain't

¹² *Vill. of Oak Brook, Ill. and Teamsters Local 714*, S-MA-96-73 at 6 (Benn, 1996) ("Ultimately, through weighing and balancing the factors in Section 14(h), the interest arbitrator selects the more reasonable offer. The offer selected often is the logical result of where the parties' negotiations were going"); see, also *Will County Bd. and AFSCME, Local 2961*, S-MA-88-09 at 49-50 (Nathan, 1988) ("If the process is to work, it must not yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process").

broke, don't fix it."; County of Cook and Ill. FOP Labor Council, L-MA-02-008 at 9 (Benn, 2003).¹³

That the issue is residency does not change this analysis where, as here, residency has been a subject of bargaining for some time and has indeed been bargained to resolution. In *City of Carbondale and Ill FOP Labor Council*, S-MA-04-152 at 24 (Briggs, 2006), for example, Arbitrator Briggs held that the Union "must demonstrate a compelling need to" change a 20-year old residency requirement. Specifically, the Arbitrator noted that the Union had proposed various modifications to the residency requirement in the last three rounds of negotiations, but dropped such proposals each time. As such, the City's residency requirement constituted a negotiated *status quo*, and a "breakthrough" analysis was appropriate. See, also, City of Taylorville and Policemen's Benevolent Labor Comm., S-MA-04-274 at 17 (McAlpin, 2006) ("[t]he Union must prove that the old system has not worked as anticipated when originally agreed upon").¹⁴

¹³ See, also, *County of Lee and Sheriff and FOP Lodge No. 220*, S-MA-03-142 at 10 n.15 (Benn, 2004) ("[u]nless the process resulting from the negotiated language is shown to be 'broke', the parties must live with the consequences of that language"); *City of Countryside and FOP Labor Council*, S-MA-03-201 at 15 (Benn, 2003) ("there must be a strong showing that the breakthrough item [] is required"); *Vill. of Lisle, Ill. and PB&PA Labor Comm.*, Arb. Ref. 02-162 at 11 (Benn, 2002) ("the PB&PA seeks to change the *status quo*. The PB&PA therefore has the burden to show, as it states, that the merit system is 'truly broken'").

¹⁴ In contrast, in early cases addressing the issue of residency, Arbitrators refused to apply the "breakthrough" analysis because the parties had no negotiated *status quo*. As such, in these early cases, the Union did not have to meet the heavy burden of showing why the *status quo* no longer worked. See, *Village of South Holland, Ill. and Ill. FOP Labor Council*, S-MA-98-120 (Goldstein, 1999), see, also, *Town of Cicero and IAFF Local 717*, S-MA-98-230 at 19-20 (Berman, 2000) (finding that the traditional status quo/breakthrough analysis does not apply because residency was never a mandatory subject of bargaining prior to the interest arbitration proceeding); *City of Blue Island and Ill. FOP Labor Council*, S-MA-00-138 at 3-4 (Perkovich, 2001) (finding that the union's proposal was not a "breakthrough" because the parties had never bargained over residency); *Calumet City and Ill. FOP Labor Council*, S-MA-99-128 at 67 (Briggs, 2000) (finding that the residency requirement unilaterally imposed by the City before 1997 falls short of comprising a long-standing negotiated history which should not be disturbed in interest arbitration proceedings).

Likewise, here the Union proposed residency in 1997, which it later dropped in interest arbitration, and then the parties fully bargained the issue to resolution in 2001. The parties have an established, negotiated *status quo* on the issue of residency, and the Union must meet a heavy burden to justify any radical changes to the agreed-upon residency rules. See, City of Jacksonville and Jacksonville Firefighters Ass'n 637, S-MA-03-098 at 24 (Cox, 2003) (finding that the Union must offer substantially compelling reasons in support of breakthrough residency proposals).

During negotiations for the parties' fifth Collective Bargaining Agreement, effective May 1, 2001 through April 30, 2004 ("2001-2004 Agreement"), residency was a mandatory subject of bargaining. (U. Ex. 1, Tab 6.) The Union sought and ultimately obtained a relaxation of the residency requirements from strict residency within Matteson's municipal boundaries, per the Village ordinance, to boundaries outside of Matteson for employees who were hired after April 18, 1994. (U. Ex. 1, Tab 6, Art. XVII, Sec. 17.12 at 43.) The expanded boundaries included the Indiana border to the east, Farrell/Cherry Hill Road to the west, 127th Street to the north, and Eagle Lake Road to the south. Employees hired before April 18, 1994 could still reside anywhere, even outside Illinois. This residency boundary is approximately twelve miles. (ER. Ex. R16.)

At the time the parties agreed to expand the boundaries for residency, they also entered into a side-letter agreement concerning residency provisions. (U. Ex. 1, Tab 6 at 59; ER. Ex. R15.) Specifically, the side-letter agreement stated in relevant part:

The parties further agree that such residency requirements shall not be a subject of bargaining in negotiations as to the successor agreement to this Agreement unless the Village has extended the residency boundaries for any other bargaining unit or for non-bargaining unit supervisory employees in the Fire Department beyond those set forth in Section 17.12. Nothing in

this Side Letter shall be construed as limiting the Union's right to bargain as to the subject of residency after the term of the successor agreement.

In sum, the present matter is not the first opportunity for the parties to negotiate expanded residency boundaries. In the 2001-2004 Agreement, the Village and Local 3086 did negotiate residency. There is no reasonable basis to re-negotiate it now, the Village asserts. The "high burden" necessary for such a breakthrough has not been proven. Finally, with respect to the criteria applicable under the Act, the Employer's proposal to maintain the *status quo* is by far the more reasonable offer, as opposed to the Union's demand that state-wide residency be permitted for firefighters. This is most obvious because the operational need for emergency callback would be seriously and negatively affected by this Union demand. And, most important, the Union has not offered any *quid pro quo* to the Village to "buy" its demand for a state-wide residency provision, the Village submits.

VII. The Union

Prior to 1997, in Illinois, the issue of residency was a permissible topic of bargaining, not subject to interest arbitration. In 1997, the Illinois General Assembly amended the Act to include residency as a mandatory subject of bargaining. P.A. No. 90-385 (codified as amended at 5 ILCS 315/14(i)). Over the years, this Arbitrator has had the opportunity to rule on residency requirements numerous times. *City of Galesburg v. Public Safety Employees Org.*, ISLRB No. S-MA-03-197 (Goldstein, 2005); *Policeman's Benevolent and Protective Ass'n Unit 54 v. City of Elgin*, ISLRB Case No. S-MA-00-102 (Goldstein, 2002); *City of Rockford v. Policeman's Benevolent and Protective Ass'n Unit No. 6*, ISLRB Case No. S-MA-99-78, (Goldstein, 2000); *Village of South Holland, Ill. v. Ill. Fraternal Order of Police Labor Council*, ISLRB Case

No. S-MA-97-150 (Goldstein, 1999); *City of Burbank v. Ill. Fraternal Order of Police Labor Council*, ISLRB Case No. S-MA-97-56 (Goldstein, 1998).

In a review of those decisions by the Union, I am reminded that I have consistently set forth the test that a party seeking change to the *status quo* must meet to prevail in interest arbitration. As I noted in *City of Burbank*,

In order to obtain a change in interest arbitration, the party seeking the change, must at a minimum, prove: (1) That the old system or procedure has not worked as anticipated when originally agreed to; (2) That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and (3) That the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems.

Although Local 3086 discusses this standard, and can meet its burden of proof – assuming *arguendo*, this standard was held applicable herein given the Village's last proposal – both parties now seek to change the *status quo*, thereby clearly relaxing the Union's burden of proof, the Union strongly argues. As will be developed below, I find this particular argument of Local 3086 to be perhaps the most difficult contention to respond to, as it would, if established, take this case totally out of the whole “breakthrough” analysis, as will be evidenced in detail below.

It is also the Union's position the *status quo* residency requirement has not worked as anticipated when originally agreed to because it has created inequity among bargaining unit employees. In support of that contention, it argues that when the residential zone was originally expanded in the 2001-2004 Agreement, the parties also entered into a side-letter agreement that stated that the residency requirement would not be a subject of bargaining in the successor 2004-2007 Agreement negotiations. (U. Ex. 1, Tab 6 at 59.)

Thus, when residency was originally expanded, contrary to the Village's expressed surprise herein that the issue was not put to rest, it was, if anything, anticipated that the parties would once again revisit the issue following the 2004-2007 contract. This is underscored by the last sentence of the side-letter agreement which states, "Nothing in this Side Letter shall be construed as limiting the Union's right to bargain as to the subject of residency after the term of the successor agreement."

While the residency requirement has not worked as anticipated when originally created due to the growing inequity among bargaining unit employees, the Union contends the Village should have anticipated that the Union would once again raise the issue when given the contemplated opportunity. This is exactly what Local 3086 President Anello did when he met with Human Resource Director Crouch on July 31, 2006, informing him that residency would be the sole issue driving the upcoming negotiations. (U. Ex. 4.)

That the *status quo* residency requirement has not worked as anticipated because it has created an ongoing inequity among bargaining unit employees is best illustrated by reviewing the seniority list dated January 12, 2007, according to the Union.

Employees numbered one through ten (excluding Pat Gericke) are able to live anywhere they choose because no residency requirement existed when they were hired. (U. Ex. 5, Tab 4.) Three of those ten employees actually live outside of the current residential zone. William Mincey lives in Coal City. (U. Ex. 5, Tab 5.) Daniel Kukulski lives in Crown Point, Indiana, and Edward Leeson lives in Manteno. Employees with seniority numbered 11 through 31, however, must live within the current residential zone, as they are subject to the *status quo* residency requirement. When

Gerald Irwin and Chris Schwalbe, numbers 11 and 12, initially tested for the position, there was no residency requirement, but by the time they were hired, each was subject to the residency restriction. This inequity is further underscored by virtue of the ranks these employees hold. Of the nine bargaining unit employees who can live wherever they choose, including outside of Illinois, seven of them hold the rank of Lieutenant or Shift Commander. Thus, while virtually all firefighters are restricted as to where they reside, the higher rank bargaining unit employees can live where they so choose.

The Union asserts that the Village's proposal not only impairs bargaining unit employees' right to live where they choose, but also restricts their choice as to where to educate and raise their children. Twenty-two members of the bargaining unit have school-age children. (U. Ex. 5, Tab. 5.) While the Village introduced extensive exhibits to establish the quality of life, schools, and housing within the current residential zone, such evidence misses the mark. (ER. Exs. R25-R29; ER. Ex. B.) Rather, the Union's argument turns on the issue of liberty and the right of employees to live, educate, and raise children wherever they deem fit. As the record indicates: "[T]he union's position was not an argument with respect to quality of schools; [It is] an argument with respect to the fact that employees should have a choice as to where they want to send their children to school, given the number of people in this unit who have children of school age." The members of Local 3086 seek freedom from "extraordinary restrictions" on their private lives. *City of Rockford*, ISLRB No. S-MA-99-78 at 59.

Thus, according to the Union, given the substantial inequity created among employees and given the great priority that these employees "have placed on their desire to obtain the basic right to live where they want, within reason" and the inability of

the Village “to show operational reasons for denying that request for change, as opposed to political or social ones,” as discussed below, the Union’s final offer should be adopted.

The Union also emphasizes that the Village has failed to establish a valid operational necessity for the residency requirement. It is quick to point out that the Village expended extensive record time attempting to bolster its argument that the residency footprint should not be expanded based on operational necessity. Specifically, the Village contends that it wants “to have emergency responders close enough to return in an emergency callback situation.” However, the record evidence undermines this contention as there is simply no correlation between where employees live and the number of emergency callbacks to which they respond. In *City of Rockford*, the employer’s operational efficiency argument did not persuade this Arbitrator because so many employees who were permitted to live outside the Rockford city boundaries (having been grandfathered in) still performed their work in a satisfactory manner or higher, the Union contends.

Similarly, employees in the instant case who are not subject to the residency requirement, and living outside the residential zone, perform their work in a satisfactory manner or higher, responding to as many or more callbacks as bargaining unit employees living within Matteson. (U. Ex. 13.) The MFD calculates callback percentages to determine which employees receive emergency callback response incentive pay. (U. Ex. 13 at 1.) In fiscal year 2003-2004, Mincey, Leeson, and Kukulski, all of whom live outside the current residential zone, responded to 150%, 82%, and 64% of callbacks, respectively. (U. Ex. 13 at 2.) In fiscal year 2004-2005, Mincey, Leeson,

and Kukulski responded to 50%, 88%, and 60% of callbacks, respectively. In fiscal year 2006-2007, Leeson, who lives in Monteno, responded to 74% of callbacks. By contrast, in fiscal year 2004-2005, Angelo Brown, who lives in Matteson, responded to just 31% of callbacks, and in fiscal year 2006-2007, he responded to only 6% of callbacks.

The Village claims that employees need to live "close-by" for operational necessity, avers the Union. The Village's theory is questionable given that bargaining unit employees living inside the *status quo* residential zone yet outside Matteson's municipal boundaries respond to as many or more callbacks as employees who live within Matteson proper. (U. Ex. 13 at 2-4.)

In fiscal year 2003-2004, I am also told, there were six employees living in Matteson who responded to 100% or more of callbacks while there were seven employees living outside Matteson, but within the residential zone, who responded to 100% or more of callbacks. (U. Ex. 13 at 2.) In that same year, of the two top callback responders, one lived in Matteson and the other in Monee: David Lovett who lives in Matteson responded to 200% of callbacks while James Dermody who lives in Monee responded to 267% of callbacks. In fiscal year 2004-2005, six employees living in Matteson responded to 100% or more of callbacks, and eight employees living outside Matteson, but within the *status quo* residential zone, responded to 100% or more of callbacks.

Furthermore, in fiscal year 2006-2007, six employees living in Matteson responded to 50% or more of callbacks, and nine employees living outside Matteson, but within the residential zone, responded to 50% or more of callbacks. The aforementioned figures demonstrate that there is no correlation between how many

times employees actually respond to callbacks and where employees may live. (U. Ex. 13.) Therefore, says the Union, the Village has failed to establish a genuine operational necessity for the *status quo* residency requirement.

Similarly, the Village's argument is undermined by common sense, the Union insists. As is further discussed below, virtually all of the external comparables have unrestricted residency, including Indiana. Certainly, the Village's alleged concerns about bargaining unit employees responding to callbacks is not unique to the MFD or different from any other community. Moreover, the record is devoid of evidence that the Village has ever had a problem with employees responding to callbacks. This is further evidenced by the Village's conduct in the recent contract negotiations.

Notwithstanding the sudden importance placed by the Village on callbacks in this proceeding, curiously, in its economic proposal dated March 13, 2007, the Village proposed to remove the emergency callback incentive pay provision from the contract. (U. Ex. 1, Tab 13, Packet 2 at 1.) *That* proposal countervails the Village's assertion that emergency callback response is an operational necessity, given that the callback pay provision stands as the primary incentive for employees to voluntarily respond to emergency callbacks. As Mr. Kramer, attorney for the Village stated: "[W]e expect the employees to report who have an obligation to do so. And we do that and rely on that expectation, rely on the callback pay and the incentives to make sure that sufficient numbers of employees come back." It is illogical that the Village would seek to eliminate the callback incentive pay provision from the contract when it relies on that very provision to motivate bargaining unit employees to supposedly respond to callback emergencies, insists the Union.

Continuing its argument that this dispute demands a turning away from a “breakthrough” standard, the Union asserts that there was no *quid pro quo* because the Village refused to bargain over residency. It strongly believes that this record points up one basic fact, namely, that the Village, in these negotiations, simply *refused* to address the issue of residency at the bargaining table. Therefore, says the Union, there was no *quid pro quo*.¹⁵ As early as July 31, 2006, Local 3086 President Anello informed then Human Resources Director Robert Crouch that relaxing the residency requirement would be a matter of paramount importance to the Union in the upcoming contract negotiations. (U. Ex. 4.) Throughout those negotiations (and consistent with President Anello’s notification to the Village’s human resources director), the Union explicitly and continuously communicated its strong desire to negotiate a change to the residency requirement. (U. Ex. 1, Tab 12, Packets 2, 5.)

Accordingly, the Union’s initial proposal set forth contractual language that provided: “No employee covered by this Agreement shall be subject to any residency requirement.” (U. Ex. 1; Tab 12, Packet 2, Sec. 17.2.) In its second proposal dealing with non-economic items, the Union again suggested the same language. (U. Ex. 1, Tab 12, Packet 5.) The Village, on the other hand, repeatedly proposed the *status quo*, limiting residency to the boundaries set forth in the 2001-2004 and 2004-2007 Agreements. (U. Ex. 1, Tab 13.) During the negotiations, the Village negotiating team,

¹⁵ Fire Chief Wilkens’ contention that the Village did, at one meeting, invite the Union to propose what it would exchange in return for an expansion to residency is not credible. First, his testimony made no sense. Chief Wilkens stated that somehow the Union should give up its \$400.00 paramedic stipend and the Village would do away with the callback assignment. The Union’s contention that no such *quid pro quo* discussions took place is substantiated by the record evidence. When asked to see bargaining notes from that alleged meeting, Kathy Murray of the Village’s Human Resources Department, whom Wilkens testified was there, and who was the Village’s chief negotiator, could not produce a single meeting note let alone the meeting date. Moreover, the Chief contended that bargaining unit employee Sam Anello was not present at the meeting. Anello testified that he was present at every bargaining session.

contrary to its position in the instant proceeding, was adamant that residency was a political issue over which it had no authority to bargain. President Anello, who attended all of the bargaining sessions, testified:

Q: And what was the position that the union maintained throughout contract negotiations?

A [Anello]: Our position was that residency should be eliminated entirely.

Q: And what, if any, willingness was there on behalf of the Village to discuss the topic of residency?

A [Anello]: They seemed more unable to discuss it. Their commentary each time was *status quo*, that this was a hot political item, that the Village Board was unwilling to broaden residency.

Q: What, if anything, did the employer's bargaining committee represent with respect to the authority to negotiate residency?

* * *

A [Anello]: It seemed that they did not have the authority to discuss this topic, that it had come through the Village Board. The direction was entirely the Village Board's choosing and not at the bargaining table.

According to the Union, the political nature of the Village's intransigence with respect to residency is underscored by two Village Board meetings in Summer 2007 where Village Trustees discussed the Village's residency requirement in the context of its recruitment of department heads. During those meetings, some trustees even expressed views reflective of the Union's position here – that employees should be able to live where they choose and that residency requirements are out-dated. For example, at the July 16, 2007 Board meeting, Trustee Ashmore responded to the resignation of the Village's budget officer, due to the officer's inability to comply with the Village's residency requirement, by stating:

[R]esidency is a thing of the past . . . There really is no longer any proof that we get more bang for our buck by really requiring this . . . We need to take a look at it and stop kidding ourselves and really get rid of it altogether. (U. Ex. 6.)

Furthermore, at an August 6, 2007 Board meeting, the Trustees again discussed the Village's residency requirement. There, they were deciding whether to retain the services of a consulting group to assist the Village in its recruitment of directors of community development and human resources. (U. Ex. 5, Tab 7, at 4; U. Ex. 7.) A representative from the consulting group notified the Board that the group could not conduct a successful search for qualified candidates given the limitations that the residency requirement imposed on the breath and depth of the applicant pool. (U. Ex. 7.) In response, Trustee Ashmore commented, "As we all know, we have a lot of varied feelings about residency up here. I still believe . . . it is soon to be a thing of the past and should be." (U. Ex. 7.) Thereafter, President Stricker said, "I have to concur with . . . Trustee Ashmore, in the sense that the residency issue is becoming an antique."

The fact that the context of the residency discussions at these meetings involved Village department heads does not alter their applicability to the present matter. While the Village has tried to undermine the testimony from these meetings, claiming these sentiments only apply in the department head context, the 2001 newspaper article demonstrates that Trustees felt the same with respect to residency for Fire Department bargaining unit employees. (U. Ex. 3.)

After the Union and the Village reached agreement on the 2001-2004 Agreement where residency was a major issue, *The Star*, a local newspaper, quoted then and current Village President Mark Stricker who said, "It is freedom of choice. Employees

should be able to live where they choose. In every other occupation, people have the right to choose where they live.” (U. Ex. 3.) The article also included remarks of then and current Trustee Nathaniel Motton, Jr. who said in part, “I do not think we can trap employees with residency requirements. There is no way we can force anyone to live somewhere. People should have a choice of where they live.” (U. Ex. 3.)¹⁶

The Union claims that Emmanuel Imoukhuede, the one trustee who the Village called as a witness to support its position obviously harbors a personal opinion on residency that does not reflect that of the Board of Trustees. Moreover, says the Union, Trustee Imoukhuede’s clear disrespect and pronounced disregard for the statutory process (to which the parties are bound) tainted his entire testimony. Trustee Imoukhuede’s position does not even support that of the Village in the present matter. The Village, at least at the time of the hearing, wanted to maintain the *status quo*, which requires that bargaining unit employees reside within the expanded zone first set forth in the 2001-2004 Agreement. (U. Ex. 1, Tab 6, Art. XVII, Sec. 17.12 at 43.) Trustee Imoukhuede, on the other hand, believes that public safety employees should live in town. That Imoukhuede’s personal opinion reflects a minority view which carries little weight is further evidenced by the expanded residential zone that the Village agreed to in the newly negotiated Metropolitan Alliance of Police, Chapter #468 (“MAP”) contract (dated January 7, 2008). Imoukhuede has admitted as much. When asked whether “all the trustees share[d] [his] views,” he replied, “I can only speak for myself.”

¹⁶ The Village’s disingenuous rationale for its proposal herein is also undermined by the Village President’s comments in 2001 after the Village first agreed to expand residency. Then, Village President Stricker cited “pride in the Village as the former rationale for residency requirements.” (U Ex. 3.) Apparently, to fend off the Union’s proposals, in 2007 the Village needed a new found rationale.

Like the Union in *City of Elgin*, Local 3086 insists in this case that it has done “all it could to show how seriously [it] desires to change the current residency rules contained in the Labor Contract.” In the summer of 2006, Local 3086 notified the Village that residency would be a major issue driving the upcoming contract negotiations. (U. Ex. 4.) In the winter of 2007, and throughout the spring, it proposed language that clearly demonstrated that the Union sought to negotiate over residency. (U. Ex. 1; Tab 12, Packet 2, Sec. 17.2, Packet 5.) Finally, in the summer of 2007, Local 3086 polled its members, prior to impasse, to ensure that residency was still of utmost importance to them. Thereafter, Local 3086 immediately informed the Village of the membership’s adamant desire to see a change in the residency requirement. Yet the Union’s best efforts were to no avail because the Village refused to bargain over, or even discuss, the issue of residency. Because the Village “was never willing to name its price”, avers the Union, the Arbitrator should adopt the Union’s residency proposal. *City of Elgin* at 96.

Turning to the relevant statutory criteria, I am reminded that Section 14(h) of the Act provides that interest arbitration findings, opinions, and orders shall be based upon eight factors. 5 ILCS 315/14(h). Certain of these factors – the interests and welfare of the public, external comparability, internal comparability, and the continuity and stability of employment – are applicable to the instant case, as discussed below.¹⁷

¹⁷ Because the Village is now also seeking to change the *status quo*, Section 14(h) factors should control the arbitrator’s determination as to which proposal is more reasonable, the Union now stresses.

II. By Encouraging The Continuity And Stability Of Employment, The Union's Final Proposal Best Supports The Interests And Welfare Of The Public

The public is entitled to a stable body of firefighters. However, the residency requirement negatively impacts the continuity and stability of employment within the Department because it causes qualified bargaining unit employees to leave Department employment. (U. Ex. 5, Tab 11). Of six bargaining unit members who left the Department, four identified residency as a factor in their decision to resign.¹⁸

Not only does the residency requirement cause the Department to loose qualified employees, it also limits the pool of potential applicants. (U. Ex. 5, Tab 7 at 4; U. Ex. 7.) Therefore, the citizens of Matteson may not be getting the best employees available. (U. Ex. 7.) This is further bolstered by the fact that unlike in many Fire Departments, the MFD requires firefighters to also be paramedics thereby reducing the possibility of qualified applicants even further. Although the Village asserts that it amply notifies prospective Department employees regarding the residency requirement (ER. Ex. R18), this does not remove the residency restriction as a significant factor leading to department attrition (U. Ex. 5, Tab 11). The citizens of Matteson have the right to expect the best fire protection service possible, and that involves continuity and stability of fire service personnel and a strong applicant pool. Therefore, the Union's proposal best serves the interests and welfare of the public.

¹⁸ Union Exhibit 5, Tab 11 includes two individuals who the Union has been unable to contact. Thus, it is not know whether residency was a factor in their decision to leave the MFD. While the Village contends that in exit interviews, these employees did not cite residency as a reason for their departure, the information gathered in an exit interview may not be complete.

II. External Comparability Strongly Supports The Union's Proposal To Expand The Residential Zone

The Act requires Arbitrators to consider comparable communities when making determinations in interest arbitrations. 5 ILCS 315/14 (h)(4). As this Arbitrator noted in *City of Burbank*, "in any interest arbitration case, external comparability plays a very crucial role."

For the purposes of this proceeding, the parties have agreed to the external comparables.¹⁹ (U. Ex. 5, Tabs. 8, 10.) The comparable communities are: Alsip, Bridgeview, Chicago Heights, Chicago Ridge, Forest Park, Homewood, LaGrange, North Riverside, Oak Forest, Park Forest, River Forest, and Villa Park, all Illinois municipalities. (U. Ex. 1, Tab 5 at 58; U. Ex. 5, Tab 10.) Of the twelve external comparables, points out the Union, seven have no residency restrictions whatsoever. (U. Ex. 5, Tab 10.) The seven communities that do not restrict residency include: Bridgeview, Homewood, LaGrange, North Riverside, Oak Forest, Park Forest, and River Forest. (U. Ex. 5, Tab 10; U. Ex. 8, Tabs 2, 6, 7, 8, 9, 10, 11.) Forest Park restricts residency only to the State of Illinois. (U. Ex. 5, Tab 10; U. Ex. 8, Tab 5, Art. XXXII at 41.) The four remaining communities that still have residency requirements include: Alsip, Chicago Heights, Chicago Ridge, and Villa Park. (U. Ex. 5, Tab 10; U. Ex. 8, Tab 1, Art. 14, Sec 16 at 26, Tab 3, Art. XXVI at 44-45, Tab 4, Art. XVII, Sec. 17.8 at 28, Tab 12, Art. XXVIII at 54.) Of those, all except Chicago Heights, have residential zones that are substantially larger than the residential zone that exists under the parties' *status quo* contractual language. For instance, the Chicago Ridge residential zone has an approximately twenty-five-mile radius. Villa Park's residency

¹⁹ The parties have agreed that the comparable communities relied on by the parties herein are agreed to on a non-precedential basis.

zone includes the counties of Cook, DuPage, Kane, Lake, Will, and McHenry. (U. Ex. 8, Tab 12, Art. XXVIII at 54.) Chicago Heights, with its anomalous restriction, is the only external comparable where its municipal boundaries constitute its residential zone. (U. Ex. 8, Tab 3, Art. XXVI at 44-45.)

External comparability clearly favors the Union's proposal because seven of the twelve comparable municipalities have no residency restriction whatsoever, one requires residency in Illinois, as proposed by Local 3086 herein, and only four have residential zones smaller than the State of Illinois, of which three have substantially larger zones than that of Matteson. Moreover, none of the comparable communities with the residential restriction carve out specific cities within that restriction as the Village attempts to do herein. (ER. Ex. R. 34.) Therefore, insists the Union, the Arbitrator should find that the Union's proposal to expand the residential zone to the State of Illinois is the most reasonable.²⁰

II. Internal Comparability Does Not Support the Village's Proposal

As this Arbitrator held in *City of Galesburg*, ISLRB No. S-MA-03-197:

Internal comparability is not compelling on this issue, I firmly believe. This is so because, by definition, the relatedness of the bargaining units as to this issue – “me, too,” is traditional for residency - - the results in the fact that, almost per se, internal comparability exists no matter what the current residency rule is. The argument thus confuses independent and dependent variables. It is essentially circular, I hold.

Assuming *arguendo*, internal comparables were relevant herein, because the internal comparables vary and are anything but consistent, internal comparability does not favor the Village's proposal. First, not all Village employees are required to live

²⁰ The Village's last minute offer to expand the residential zone is of no consequence. It merely modifies the approximately 12-mile radius to approximately 13½ miles. (ER. Exs. R16; R34.) Moreover, it precludes employees from living in Joliet and Chicago.

within the residential zone. While public safety and Public Works employees are subject to residency requirements, other classes of Village employees are not (e.g., clerical workers). Second, even though at the time of the hearing, all the relevant internal comparables had contracts containing the same residency requirement as Local 3086's 2004-2007 Agreement, that has now changed. (U. Ex. 8, Tab 13, Art. XXV at 40, Tab 14, Art. XIX, Sec. 19.6 at 34; ER. Ex. A, Tab "Police Sergeants", Art. XXIV at 33; ER. Ex. 33.)

On January 8, 2008, the Village reached a successor Collective Bargaining Agreement with the MAP. (ER. Ex. 34.) That agreement sets forth a revised residency requirement that modifies the *status quo*. (ER. Ex. 34, Art. XXV at 40.) The revised residency requirement contains a slightly expanded residential zone. According to the Village, as a result of the expanded residential zone, police bargaining unit employees can now live in the following additional communities: Beecher, Lockport, Lemont, Palos Park, Palos Heights, Alsip, Blue Island, and Calumet Park. (ER. Exs. R16, R34; Jan. 24, 2008 Kramer correspondence.) Using the Village's own map exhibit and scale, the expanded residential boundaries merely add approximately 1½ miles to the west, 1 mile to the north, and 1½ miles to the south. (ER. Ex. R16.)

The new MAP contract, however, is of no consequence to the instant matter because the record is devoid of evidence that there was a *quid pro quo* for the police to accept this ever-so-slight expansion to the residential zone. Although substantial changes were made in the new MAP contract, such as a revamped wage scale, there is no record evidence that the new wage scale, or anything else, were offered in exchange for the expanded residential zone. (ER. Ex. 33, Art. XVI, Sec. 16.1 at 28.) Regardless

of whether there was a *quid pro quo*, the fact that MAP and the Village signed a side letter that contains a "me too" clause allowing the police to benefit from whatever changes to the residential requirement Local 3086 attains herein further nullifies the impact of the MAP negotiations on the current matter.²¹ (ER. Ex. 33 at 51.) If anything, submits the Union, the Village, by modifying its proposal last minute to expand the residency zone, although ever so slightly, raises issues as to what its true motivation was at the bargaining table with respect to the firefighters versus the police, knowing how important this issue was to the Local 3086 bargaining unit. It further brings into question the veracity of the Village's unrefuted representation, in firefighter, negotiations, that the Village's Board was unanimous that it would not change residency.

II. Assuming Arguendo that the Arbitrator does not Adopt the Union's Proposal for State-Wide Residency, has the Authority to Craft a Reasonable Residency Requirement

As the parties have stipulated, residency is a non-economic issue. Therefore, the Arbitrator, by law, has the authority to craft a reasonable residency requirement, argues the Union. While Local 3086 believes that its state-wide residency proposal is fully supported by the record evidence and applicable statutory considerations, should the Arbitrator determine that it is unreasonable, Local 3086 urges the Arbitrator to expand the residency requirement well beyond that which the Village has offered or for that matter, beyond the residential restrictions contained in the few comparable communities that are subject to a restriction.

²¹ Obviously, MAP had nothing to lose by agreeing to the residency provision as it will automatically reap the benefit of any expanded residency Local 3086 may obtain in interest arbitration. It should be noted that the Village's latest proposal also requires Local 3086 to give up future bargaining rights, something that cannot be bargained away by MAP or ordered by an Arbitrator.

III. DISCUSSION AND FINDINGS

The sole issue before this Arbitrator is that of residency. The Village's pre-hearing proposal was to maintain the *status quo*, that is, the residency requirements contained in Section 17.12 of the parties' predecessor Collective Bargaining Agreement (U. Ex. 1, Tab 12.) On January 10, 2008, the Village modified its pre-hearing proposal and presented its final offer as set out under Part III above. This Management final offer is identical to the residency provision in the MAP-Village labor contract which was entered into on or around January 10, 2008, as I understand it.

To Management, this final offer is a minor tweaking of the *status quo* in that what the parties have chosen to call the "residency footprint" set out in the predecessor agreement, with what I perceive to be three changes. The first is that the time frame for a new hire's compliance with the residency requirement contained in Section 17.12 would be increased from the current 18 months to 24 months. The second is that the Municipality of Beecher would be included in the residency footprint. The third is that residency would not be negotiable at the conclusion of the 2007-2010 Agreement and not for the successor agreement. This result would be done by virtue of my adopting a proposed side letter to the current agreement identical to the side letter agreed to in January, 2008 by the Village and MAP on behalf of the Patrol Officers Unit.

The Union's final offer is residence within the State of Illinois. It also would require, as Management now has proposed in its final offer, as just mentioned, an increase from the current 18 months to 24 months before a new hire had to comply with Section 17.12. This is so because the Union proposed that the residency requirement would become effective within six months after the completion of [a firefighter's] probationary period."

The parties have stipulated that the residency issue, the only one before me in this interest arbitration, I again stress, is non-economic. As the parties have also agreed, under the Act, for a non-economic issue, I have the authority to either accept either party's offer as more reasonable, based on the statutory criteria set out in Section 14.h of the Act, or I may fashion my own award based upon the evidence and exhibits submitted. I have at times exercised that discretion in other cases involving residency, e.g., The City of Galesburg, supra, ISLRB Case No. S-MA-03-197, at pp. 74-75.

In the proper resolution of this dispute, certain generally-recognized ideas and standards are of great significance, as I see it.

As was recently observed by Arbitrator John C. Fletcher, in City of Alton and Associated Firefighters of Alton, Local 1255, ISLRB Case No. S-MA-06-006 (issued December 20, 2007), at p. 7, in discussing these important standards in interest arbitrations brought under the Act:

“A number of well-established principles should (and will) serve as underpinning for this interest arbitration award. First, it is now essentially settled that interest arbitration in general is intended to achieve resolution to an immediate impasse, and not to usurp, or be exercised in place of, traditional bargaining. Some Arbitrators have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through “normal” negotiations. Otherwise, as some have reasoned, the entire collective bargaining process could be undermined to the extent that at the first sign of impasse, parties might immediately resort to interest arbitration.”

I completely agree with this baseline precept, and will do my best to adhere to the goal of not short-circuiting the parties' bargaining process in my decision in the instant dispute. Any fair analysis of the residency issue must begin with the idea that I

have been engaged to mimic what the parties would have negotiated had the process in this case worked, and not to grant "free breakthroughs" the parties likely never would have negotiated on their own.

If this requires a "crystal ball," an idea which Arbitrator Fletcher, among others, has real trouble with (City of Alton), S-MA-06-006, 2007, at pp. 8-9), so be it. All the Illinois interest arbitrators at this point in time know what our authority is and that it should be exercised "with due consideration as an extension of the bargaining process and not a replacement for it." *Id.* at p. 9. The whole job is to try to fashion a solution on the non-economic issues in light of the facts presented, the proposals the parties actually tendered, and the statutory criteria. If it is difficult to discern which proposal the parties "would likely have achieved on their own," it still is my obligation to solve the bargaining impasse in a way that does not undermine the bargaining relationship by giving either party "free goods," I stress.

As should be evident from the detailed recitation of the parties' positions in the instant matter, which has been presented through the use of computer technology to in fact merge the Union and Employer briefs, it is clear that the parties well know my adherence to the principle that there should be no substantial "breakthroughs" from a negotiated *status quo* as a result of the interest arbitration process. In an early Illinois interest arbitration case, Arbitrator Harvey A. Nathan characterized the burden on the parties seeking a breakthrough as having to demonstrate, at a minimum:

- (1) That the old system or procedure has not worked as anticipated when originally agreed to, or;
- (2) that the existing system or procedure has created operational hardship for the employer (or equitable or due process problems for the union); and

(3) that the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address the problem. Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, p. 52 (Arb. Nathan – 1988).

It is also evident from the submitted post-hearing briefs that the parties know that I fully accept Arbitrator Nathan's reasoning as set out immediately above, namely the Will County *status quo* rule. I firmly believe these standards set out by Arbitrator Nathan in 1985 have become the conventional wisdom on this point. See, my decisions in the City of Burbank and Ill. Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Ass'n. Unit 54 and City of Elgin, ISLRB Case No. S-MA-00-102 (2002), at pp. 95-97. Obviously, the bargaining process itself must be protected to the extent that negotiations across the table, as opposed to a race to an interest Arbitrator, is encouraged. Interest Arbitrators such as myself must be mindful of the high standards necessary for a conclusion that a deviation from the *status quo* is required when the parties themselves could not negotiate such a breakthrough in good faith bargaining, I emphasize.

This Union has vigorously attempted to convince me that it is not seeking a breakthrough on the residency issue in this case. First, it claims that both the Village and IAFF Local 3086 in the instant dispute have presented final offers that do in fact change the *status quo* of the current residency requirement. This is so, I am reminded, because while the Union is currently demanding a provision providing only for residents within the State of Illinois, Management has changed the length of time before the residency rule kicks in from 18 months to 24 months; it demands a side letter that

mandates the negotiation of changes in the residency provision be taken off the table for the next labor contract between these parties; and it includes the Municipality of Beecher in the residency footprint.

I take special note here of the extremely minor nature of the changes in the substance in two of the three changes reflected in Management's final proposal on residency. It is also important to note that one of these two minor departures from the *status quo* Management now is proposing is precisely what was asked for by the Union: an agreement to extend time for compliance with the current residency requirement from 18 months to two years.

There is no need to adopt a "crystal ball" approach to come to the conclusion that this particular slight modification would have been agreed to as part and parcel of a healthy bargaining process. Applying that standard here, I am persuaded that the minor change in the period of time required for the residency rule to become applicable to a newly hired firefighter hardly constitutes a Management demand for a change in the *status quo*, as the Union would have it, so as to make the instant dispute out of the rubric of the "breakthrough" analysis. This is so, I am convinced, because what each side is proposing here as regards the change in the length of time when the actual requirement to comply with the residency provision would kick in does not change the residency zone or footprint at all. The existing system of the residency footprint stays the same.

I find this part of Management's final proposal to be tinkering at the edges and not a substantive change in the *status quo* sufficient to illuminate the underlying reasons for the development of the "breakthrough" standard of analysis in the first place. In

other words, the minor change in the time requirement for the rule to apply to new employees, mutually proposed in this instance, too, I note, simply cannot reasonably be interpreted to make both the Union and the Village the moving parties seeking to change the negotiated rule under discussion, Section 17.12, I am persuaded. To the extent the Union is saying the opposite, I stand unconvinced.

If this is true for the requested changes in the period of time when the residency requirement becomes applicable, it is certainly true of the minor tweak reflected in Management's proposed side letter with respect to the Municipality of Beecher. It is to be remembered that what is being proposed by the Village by virtue of this aspect of its side letter is merely the mutual agreement of these parties that Beecher is to be included in the residency footprint, whether or not Beecher technically falls in the footprint or only across the street of its outer edge. That sort of "cleaning up of contract language" cannot reasonably be found to be a Village proposal to change the *status quo* so as to make it, as well as this Union, a moving party for purposes of the now well-accepted stringent requirements for a "breakthrough," I rule. To hold otherwise would put form over substance, I find.

Clearly, the part of the Employer's proposed side letter that takes residency off the table for the successor labor contract to the 2007-2010 Collective Bargaining Agreement is substantive, I rule. The fact that there was a similar side letter bargained in the negotiations for the 2004-2007 labor agreement is irrelevant to that fact, I hold. Moreover, as will be developed below, I agree with the Union that it is questionable whether or not an interest Arbitrator could impose such a limitation on what is

bargainable for a future contract in framing the terms of this current labor agreement. That is a significant point, I recognize.

Unlike the Union, though, I do not find the proffering of this bargaining proposal by Management requires a conclusion that the Village is now a moving party to a demand for the *status quo*. Quite the opposite, the genuine nature of this demand to take residency off the table for the next contract by Management is to continue the *status quo* beyond this current contract, I reason, and not to change the residency zone rule now. I therefore conclude that the side letter proposed by the Village does not constitute a demand for the change in the *status quo* for the duration of this current contract. The proposal to make residency non-negotiable in 2010 cannot be found to be a sufficient reason to avoid the application of the stringent requirements for a “breakthrough” of the current *status quo* for this contract, as the Union would have it, I reason, and I so rule.

In many respects, the Union argument that Management has actually become a moving party to change the *status quo*, exactly like the Union, by virtue of the Village's proposal of January 10, 2008 tracking the negotiated residency provision between it and MAP as bargaining representative of its patrol officers, has presented the most difficult issue in this case, I note. This is so, I again stress, because if the Union had been successful in convincing that the Employer's final proposal of January 10, 2008 in fact represented a substantive deviation from the *status quo*, the breakthrough standard simply would not apply.

The moving party seeking a change, here, the Union would not be required to prove the three elements originally developed by Arbitrator Nathan in Will County Board

and Sheriff of Will County, supra, and expressly adopted by me in the City of Burbank. None of these three elements demanded by the “breakthrough” analysis are easy to establish, I also recognize. As the Union has anticipated though, in this case, I do find applicable this standard for analyzing proposals when there is a negotiated *status quo* on the specific topic of residency. See, City of Galesburg, supra. With this conclusion in mind, I turn to the issue of whether or not the Union has succeeded in presenting sufficient evidence that its proposed “breakthrough” on residency should be adopted in the instant case.

At the outset, I must also make plain that this is not a dispute where the *status quo* change factors do not apply to a residency question because this Village and this Union have not negotiated on that topic after the Illinois General Assembly changed the main public sector bargaining law as already explained in detail by the parties in their briefs. See, Village of South Holland, ISLRB Case No. S-MA97-150 (1999), supra, at p. 57. The application of the Will County *status quo* rule enunciated by Arbitrator Nathan is not limited as it was in many of the earlier interest arbitration cases because there is a negotiated residency provision between these parties. The current residency provision, Section 17.12, was clearly negotiated at arms length by these parties during extensive and intense bargaining for their 2001-2004 labor agreement, as the Union itself recognizes. There was a bargain struck in 2001, the evidence makes clear.

Additionally, the Union has not denied the Employer's contention that in those 2001 negotiations for the current Section 17.12, benefits were exchanged and concessions made by both this Union and the Village on the residency issue. Management was obviously much more detailed in its discussion of precisely what

those benefits were to the "extent of the deal," and as to the full context of bargaining between it and this Union, as well as it and the two police units, Union that was in place then, and the Teamsters representing the Department of Public Works. Indeed, Management characterizes the period from 1999 through 2001 as "residency wars." As the Employer tells it, all three Unions then involved pressed for a drastic expansion of the "Village limits residency rule" then in place for Village administrators and supervisors, police and fire, and the affected Public Work employees. Each bargaining unit, and not the supervisors and administrators, got such an expanded footprint, it says, and Management bought peace at a considerable price.

Based on these historic circumstances, the Village states, it should be absolutely obvious that the Employer negotiated in good faith on the residency topic and obtained the *status quo*, that is the 12-mile residency footprint contained in the current Section 17.12, as a negotiated term and not a gift by this Union. The *quid pro quo* for this Union for the compromise on residency, which reflected very substantial expansion from the former Village-limits residency rule, was a 12% longevity spike, a callback incentive, and an attractive wage proposal. Management strongly emphasizes just how rich the consideration was for the existing residency rule, I also note.

It is also the position of the Employer that its entire course of conduct from 1999 through 2001 illustrates how important the residency issue was in the negotiations between this Village and all its Unions that finally resulted in the provisions of Section 17.12 being incorporated in the Union contracts for the four bargaining units involved in "residency wars." It also is quick to point out that administrators and supervisors still live by the Village-limits residency rule, I further note.

The Employer also stresses that it is obvious that the same level of importance surrounding the residency issue in the negotiations that preceded this interest arbitration exists now, too. It is to be remembered, for example, that Management in these 2007 negotiations says that its bargaining team directly asked the Union Committee "what it would exchange [with the Village] in return for an expansion to residency." (Tr. 180.) According to Fire Chief Wilkens, there was absolutely no response to its "offer for the Union to make an offer". The Union rejects such a claim that Management ever asked what the Union would trade for state-wide residency and says that question simply was never posed to its Committee.

It is thus the Union's position that the Village refused to address the issue of residency at the bargaining table in the current negotiations before this interest arbitration began. It further says that there was no doubt that residency was the central issue to the rank and file in this bargaining unit from the start of the negotiations for the new contract. I also note that there is undisputed testimony from Union witness Anello, as well as documentary evidence presented into this record, that there was a vote by the Union membership to the effect that the residency rule was overwhelmingly felt by bargaining unit members to constrict their freedom of choice as to where the bargaining unit members could choose to live. The Union also claims that it was repeatedly told that political considerations required the Village's bargaining Committee to not deal on any expansion of the existing residency rule. The Village thus unreasonably resisted all the Union's attempts to bargain residency in the 2007 negotiations, I am told in no uncertain words.

I therefore understand that to the Union, at least, there is a significant credibility question involving whether Management ever asked the Union about whether it was willing to make any trades or concessions for a Management agreement to further relax the current residency rule. See, footnote 10 to the Union's brief. However, the Village anticipated that the Union would in this case focus on the Village's alleged unwillingness to bargain on the residency issue. As the Village emphasizes, the record evidence establishes that between the beginning of the current negotiations through arbitration, the Union's only move to moderate its first demand of no residency rule at all for this bargaining unit was to make a final residency provision proposal, i.e., state-wide residency, which it then never moved from in this entire process, I note.

In contrast, the record establishes that the Village bargained the issue in 2001 and actually permitted the firefighters to relocate not only outside the Village limits, but to the current 12-mile residency footprint. There is clear evidence that in 2007, the Village felt it had achieved a satisfactory *status quo* and was not going to bargain against itself by making offers beyond the current Section 17.12. The door was never closed by either party to the possibility of bargaining this issue in 2007, the record shows. Neither party chose to moderate its early offer and neither said it would trade anything for a different proposal, too, I find.

With respect to the issue of whether or not both parties engaged in good faith bargaining, one of the elements of the Will County *status quo* rule, I note, I thus believe it is unnecessary to actually resolve credibility on that particular disputed point in this current dispute. This is not a case where an Employer put the possibility of a trade of concessions out of the picture because of the way it structured the bargaining, I am

convinced. Whether or not it asked the question of what the Union would give for state-wide residency, Management had accepted trades and concessions on residency in the bargaining for the 2001-2004 contract. Moreover, too, Management bargained with MAP, apparently, on that very topic, the evidence of record indicates. MAP got a "me-too," provision. For the Union to insist that MAP having obtained a "me-too" provision on residency somehow shows that the Village was unwilling to bargain with this Union makes no sense, I find.

This is not the situation evidenced in City of Alton, ISLRB Case No. S-MA-02-231 (Kossoff, 2003, p. 42, footnote 5.) where no one from Management's side would move off city boundary residency. This is also not the case in City of Galesburg, ISLRB Case No. S-MA-03-197 (2005) where I similarly found that the City of Galesburg had structured bargaining "such that there was nothing the Union could offer as a *quid pro quo*...". This is not City of Rockford, *supra*, or City of Elgin, *supra*. Here, the Union, the moving party, explicitly and continuously communicated its strong desire to negotiate a change to the residency requirement, but neither party presented convincing evidence that it was willing to make significant trades or concessions to get a loosened residency rule, I rule. But, as Arbitrator Nathan held in Will County, in a breakthrough case, it is the party seeking the change that must persuade the neutral it was willing to bargain that change, and the other party resisted all attempts to change. The Village never showed it was implacable on residency, I hold. See, Village of Brookfield and Service Employees Int'l. Union No. 73, ISLRB Case No. S-MA-99-196 (Perkovich, 1999) (considering agreed-upon benefits in determining that the Union's proposal was

unreasonable and inadequate). The Union never showed it would trade anything to get a state-wide provision, I also find.

Based on this conclusion, it is my holding that element 3 of the Will County *status quo* factors has not been proved by the Union in the instant case. There was no breach of the duty to bargain in good faith, or no surface bargaining, merely "hard bargaining" here by both parties, I rule.

Turning now to the first element in the Will County *status quo* factors, the Union stresses that the "*status quo* residency requirement has not worked as anticipated when originally agreed to because it has created inequity among bargaining unit employee." (Union brief, p. 17.) The Union goes on to explain that the seniority list dated January 12, 2007 (U. Ex. 5, Tab 4) illustrates that the 10 most senior employees may choose to live anywhere, including the State of Indiana, because no residency requirement existed when they were hired. Three of those 10 employees actually live outside of the current residential zone, the Union quickly adds.

Indeed, employees seniority numbered 11 through 31 must and do live within the current residential footprint or zone, as they are the firefighters subject to Section 17.12, the record reveals. Moreover, as the Union stresses, it is true that of the nine bargaining unit employees who can live wherever they choose, including outside of Illinois, seven of them hold the rank of Lieutenant or Shift Commander. Thus, as the Union argues, while virtually all rank and file firefighters are restricted as to where they reside, the higher rank bargaining unit employees can live wherever they so choose. From that, the Union jumps to its conclusion that not only is this inequitable and unfair, but that the parties did not anticipate precisely this result.

My response to this particular contention is that the Union's reasoning is flawed when it attempts to suggest that that particular "inequity" was not and could not have been reasonably anticipated by both sides during the negotiations which resulted in the current residency rule first being placed in the parties' 2001-2004 labor contract. Again, it is obvious that the parties were negotiating at that time to relax the strict Village-limits residency requirements then in place. Yet, at the same time, with respect to the question of the firefighters hired before 1994, these individuals had no residency requirements whatsoever. The evidentiary record contains no evidence to counter the Employer's assertion that the political realities which existed prior to the agreement on the terms of Section 17.12 in the 2001 bargaining, as well as a sense of fairness or equity, may have motivated the exclusion of employees hired before 1994, as had also been the case when the strict residency requirement was adopted unilaterally by this Village in 1994. More important, on its face, a change in residency requirements for those individuals already hired likely would be violative of Illinois statute, I note.

I think it is one thing to argue that, if indeed this is the case, and the Union has presented no proof to contradict the Village's claim on this point, that the result of the grandfathered firefighters situation causes friction and ill-will between junior and senior members of the bargaining unit. It is quite another to say in an interest arbitration that this result was unanticipated or so inequitable that no residency rule other than a state-wide residency provision is required as a contract term to cure the problem. This is especially true when the conservative nature of the interest arbitration process -- the fact that the neutral shall not impose upon the party contractual procedures or terms he or she knows the parties themselves would never agree to -- is factored into the

analysis, I am persuaded. In the normal context of bargaining, it is not difficult to discern that the parties could not bargain away jealousy over the "grandfathered" senior firefighters who can live anywhere. No crystal ball is required to find this was not unanticipated in the 2001 negotiations, and I so hold.

I can hardly be unaware of the strength of conviction motivating the bargaining unit members in this current case. See, Village of South Holland, supra, ISLRB Case No. S-MA-98-120, at pp. 56-67. However, as has been noted by several other interest Arbitrators, if the state legislature intended to totally eliminate residency requirements or confine residency solely to areas within the State's borders, they could have easily accomplished that restriction. See, City of Highland Park and Teamsters Local Union 714, ISLRB Case No. S-MA-98-219 at p. 9 (Benn, 1999). Instead, as Arbitrator Benn noted, the legislature drafted Section 14(i) of the Act to categorize the residency requirements as "wages, hours and working conditions" as subject appropriate for bargaining.

What that line of reasoning means to me is that the Act makes residency a bargainable issue, and not an item freighted with social, philosophical and political ramifications, and specifically the liberty interests the Union feels should belong to all employees to freely choose where they live. This last point highlights the problem with Union's "liberty interests" argument, as I see it. I can hardly be unaware of the fact that the majority of interest Arbitrators have rejected this specific line of argument in favor of applying the Will County status quo rule or the specific factors set forth in the Act for use by an interest Arbitrator in deciding between Union and Management proposals, whether economic or not economic. Village of South Holland, supra, at pp. 5, 56-57.

As I already held in City of Elgin, supra, at p. 87, I believe that these statutory factors are fully applicable and should be applied with the same care and precision to the non-economic issues as to the issues the parties agree to be economic. In assessing whether relaxing the residency requirement will be in the interest and welfare of the public, it is important for any interest arbitrator to remember that the bargaining unit members and their families are also members of the public at large. Calumet City, ISLRB Case No. S-MA-99-128, p. 72 (Briggs, 2000). A general claim that liberty interests in the abstract actually control a proper resolution of the current residency rule issue cannot trump the Will County status quo rule, I find. This is so despite the fact that the Union has adroitly made its argument that several trustees and at least some residents of the Village do not believe in any residency rule at all.

As the Employer has suggested, the Will County status quo rule demands much more specific proof that unanticipated inequities exist other than a claim of liberty by the bargaining unit employee to have freedom to choose where they live make any residency rule improper. Moreover, there is not a scintilla of evidence that the residency requirement has not been consistently applied by the Village to all its employees covered by Section 17.12. It is also clear that the bargaining unit employees took up their employment with the Village knowing full well of the then-applicable residency rules in place. See, City of Taylorville and Policemen's Benevolent Labor Comm., ISLRB Case No. S-MA-04-274 (McAlpin, 2006). Simply put, this Union has not proved that the old system has not worked as anticipated when originally agreed upon, nor has it shown provable, equitable problems for the Union or its members sufficient to override

the strict requirements for an interest Arbitrator to order a change in the *status quo* that would not have been achievable through the normal negotiations process, I rule.

The last element of the Will County *status quo* rule requires a consideration of whether or not this Employer failed to establish a valid operational necessity for its current residency rule. In my view, this is in a very real sense the guts of this case. See, e.g., Village of South Holland, supra, ISLRB Case No. S-MA-98-120 at p. 59. And, putting aside for a moment the issue of which of these parties has the burden of proof on the question of the establishment of operational necessity, I note that the Employer has gone to great lengths to establish that callback and emergency response time has at least since 1994 been the driving force or "engine" behind its desire to have some sort of rational residency requirement as regards its safety sensitive and full protective service personnel. In fact, the City emphasizes that in the "whereas" clauses to the original Village ordinance that went into effect in 1994, there was a clear recitation that callbacks and response time were the core operational needs in the Village's mind in enacting the strict residency requirement in the first place. See, ER. Ex. 1.

At the heart of this case, as the Village sees it, is the testimony of Chief Wilkens in which he articulated a premise which the Village argues should be self-evident, i.e., that in order to be effective, the Fire Departments must have the ability to respond to emergencies as quickly as possible. Clearly, the Village argues, the Union's final proposal for the most relaxed residency requirement conceivable, that is, a state-wide residency rule, would multiply beyond reason potential response times. This would thus have an obviously and profoundly detrimental effect on the Village's ability to provide

resources in second and subsequent alarm situations, Chief Wilkens also at least indicated.

Significantly, the Employer presents no concrete evidence on this last point, except to say that in virtually every residency arbitration involving protective service personnel where a strict residency rule was relaxed, the contest was between a strict rule requiring such protective service personnel to live within the boundaries of the involved political unit compared to a Union proposal functionally equivalent to the *status quo*, namely the 12-mile limit contained in Section 17.12 quoted above.

It is here that the Union focuses its proofs that the Employer is simply wrong in making any assumption that response time is a function, at least in part, of distance. Even if the residency provision just referenced was negotiated at arm's length at a time when the IAFF could have demanded arbitration over it and was placed in the 2001-2004 contract through such negotiations, the Union asserts, it should not be obligated to show the *status quo* has not worked as to the operational concerns of Management, i.e. that distance is a factor going against prompt emergencies callback response, as it sees it. Instead, the Union claims what it is required to show as regards residency is that Management's assumption that this is so has not shown to be true. This Fire Department's ability to have firefighters able to respond to emergencies as quickly as possible has not been affected negatively by the grandfathered firefighters who can live anywhere, the state-wide residency requirement is now seeking to have adopted would similarly not adversely affect operations, the Union claims.

Specifically, the Union disagrees with the logic of the Village's contention that it strongly wants "to have emergency responders close enough to return in an emergency

callback situation," (Tr. 137.) The Union says the evidence it presented at hearing in the instant matter absolutely undermines this Management contention. To the Union, its proofs disclose there is simply no correlation between where employees live and the number of emergency callbacks to which they respond. It believes that the evidence shows that employees functioning under the *status quo* who are not subject to the residency requirement, and who live outside the residential footprint or zone, respond to emergencies in a satisfactory manner. Indeed, those employees who live outside the residency footprint respond to as many or more callbacks as bargaining unit employees living within this Village, the Union argues.

I am also told by the Union that the Fire Department calculates callback percentages to determine which employees receive emergency callback response incentive pay. In fiscal year 2003-2004, Firefighters Mincey, Leeson, and Kukulski, all of whom live outside the current residential zone, responded to 150%, 82%, and 64% of callbacks, respectively, the evidence establishes. In fiscal year 2004-2005, Mincey, Leeson and Kukulski responded to 50%, 88%, and 60% of callbacks, respectively. In fiscal year 2006-2007, Leeson, who lives in Manteno, responded to 74% of callbacks. By contrast, in fiscal year 2004-2005, Angelo Brown, who lives within the boundaries of this Village, responded to just 31% of callbacks, and in fiscal year 2006-2007, he responded to only 6% of callbacks.

These facts causes the Union to argue that Management has not proved that employees need to live "close-by" for operational necessity. The Village's assumption that this is so is questionable, given that the above facts show that bargaining unit employees living inside the *status quo* residential zone yet outside the Village's

municipal boundaries responded to as many or more callbacks as employees who live within the municipal boundaries of this Employer. In fiscal 2003-2004, the Union says, there were six employees living in the Village who responded to 100% or more of callbacks, while there were seven employees living outside the Village, but within the residential footprint, who responded to 100% or more of callbacks. In that same year, of the two top callback responders, one lived in the Village and the other in Monee.

The Union continued this comparison and analysis of firefighters living within the residential footprint and those who live in the Village proper for the years remaining up to the point of this hearing. The specific figures and comparisons are set forth above and need not be repeated here. The point is that the Union considers this evidence and data as having demonstrated that there is no correlation between how many times employees actually responded to callbacks and where employees may live.

Based on that reasoning, the Union firmly believes that it has shown that the Employer has failed to establish a genuine operational necessity for the *status quo* residency requirement.

My response to the Union's core argument is that the only thing its proofs actually demonstrate, in my view, is that the current *status quo* is working exactly as the parties contemplated with respect to the issue of response time and callbacks. Notice that the Union does not attempt to directly contradict Management's contention that it is an operational necessity for Fire Departments to have the ability to respond to emergencies as quickly as possible. Notice, too, that what the Union has in fact proved is that the Department 's present ability to respond to emergencies is not only satisfactory, but in fact apparently exceptional. Where the Union's argument on

callbacks fails is in convincing me that there is no correlation between where employees live and the number of emergency callbacks to which they may be able respond satisfactorily.

The fact that I held in City of Rockford, supra, ISLRB Case No. S-MA-99-78, that the Employer's "operational efficiency argument" was not persuasive was because so many employees were permitted to live outside the Rockford City boundaries (having been grandfathered in) still performed their work in a satisfactory manner or higher. That is precisely the logical basis for the number of arbitration decisions which have expanded or relaxed strict residency requirements that called for employees to "live where they work." In those cases, it was a Village-boundary rule that was presented by Management as being an operational necessity, when their employees who actually lived outside town were close enough to promptly get to an emergency. What was really going on was "live where you work," and not real operational needs, I stress, in virtually the entire line of cases where operational needs were discounted and residency liberalized by interest Arbitrators.

It is illogical to jump from those situations to a finding that response time has no impact on the Employer's operational efficiency or that a state-wide residency requirement would not operate, as a practical reality, in a less efficient way than the current residency footprint. What the Union is saying is that its evidence that the three current firefighters who live outside the residency footprint now in effect respond to callbacks at least as well and perhaps better than those who actually live in this Village requires the conclusion that distance and time necessary to be travelled to respond to an emergency callback do not matter. Finders of fact are presumed to have common

sense. No matter how this Union argument is characterized, and this argument is absolutely crucial to the Union's theory of its case, I stress, I cannot accept that logic.

Again, to say that if a firefighter used his or her liberty interests to live in the City of Alton, for example, during the 48 hours of time she or he is off-shift, and worked for 24 hours at a firehouse in this Village, would have no impact on her or his ability to respond to an emergency callback is simply wrongheaded and unreasonable, I hold. The system does not work that way. The laws of physics still apply. The Union's evidence disputing the correlation between distance of the residence from this Village and emergency response time contradicts basic laws connecting time and a distance to be travelled, I specifically emphasize. I thus accept "the assumption" of the Employer that a state-wide residency rule for these firefighters would have a negative impact on operational efficiency under these factual circumstances and I so hold. I do not agree with the Union that its evidence obviated the Department's operational concerns, and I so find.

What the evidence of record does show as regards operational necessity is that the current system or *status quo* works. Additionally, the statutory criteria under the Act are helpful when all three elements of the Will County *status quo* rule are considered, too, I stress. The fact that there is a negotiated *status quo* on residency requires this Union to present compelling evidence that there is a need of change under these circumstances. It does not counteract the basic idea behind the statutory criteria that what is being compared as regards offers being presented by the parties in an interest arbitration is the reasonableness and potential impact of each proposal.

Reasonableness is not an absolute concept. Its impact from the standpoint of this given case is that it is more reasonable to give credence or at the very least maintain the Fire Department's present ability to respond to emergencies than the Union's argument that the evidence of how the current system has functioned over time. Distance potentially makes a difference in callbacks is Management's assumption. A state-wide residency rule could unreasonably expand the time for responders to get to the fire ground in an emergency callback, is also what Management says. On at least this second point, I completely agree. Compare City of Alton, ISLRB Case No. S-MA-05-155 (Meyers, 2005) with City of Alton, ISLRB Case No. S-MA-06-006 (Fletcher, 2007).

The Village has anticipated that in support of the Union's contention that there exists no valid operational necessity for the current residency requirement, Local 3086 would focus on the mutual aid agreements between this Employer and several nearby Fire Departments. Indeed, several pages of the Employer's brief presented detailed arguments as to why the fact that the Village is party to mutual aid and automatic aid agreements whereby it seeks the assistance from other departments when it needs additional manpower is irrelevant to any proper resolution of the instant interest arbitration. It says that mutual and automatic aid is voluntary, and not necessarily prompt. It notes that the Union may argue that such emergencies are relatively rare, but, obviously, they could occur with unexpected frequency at any point in time. Moreover, mutual and automatic aid can easily overloaded by regional problems that impact multiple communities. It also strongly suggest that this Department's firefighters are better able to service the Village, since they are most familiar with it and Department

operational practices. It adds that prompt response to callbacks can hasten the ability of mutual aid companies to return to protect their own communities. Finally, Management urges that mutual and automatic aid is a two-way street and when the Village is providing mutual aid, it is supposed to be able to protect its own.

I note that a number of other Arbitrators have accepted similar Management arguments over the years. See, Village of Maywood and Illinois Firefighters' Alliance, ISLRB Case No. S-MA-92-102 (Wolff, 1993). More important, the Union did not in point of fact emphasize these specific arguments in the instant case. Given that fact, I find that there is sufficient support on this record of Management's point that the mutual aid compacts and agreement do not change the operational need for an emergency response by the Department's own firefighters as a valid and legitimate operational concern, and I so rule.

After careful consideration and review, I therefore find that the evidence of record support the Village in its position that: (1) the *status quo* has worked as anticipated when originally agreed to; (2) that the existing system is not inequitable to the bargaining unit members nor has it created operational hardships for this Employer. The current residency rule represents a valid operational necessity for it, the Employer has a right to believe; and (3) that both parties maintained a firm position in current negotiations as to the residency problem, but that the Village has not unreasonably resisted the Union's attempts to bargain this issue. I am also satisfied that, under these circumstances, Local 3086 was obligated to present compelling evidence establishing at least one of these elements, at the absolute minimum. Upon the whole of this record, I

am not persuaded that the Union satisfied its burden to demonstrate any of the three, and I so hold.

These conclusions strongly suggest a finding in favor of the Village in this matter, I am also persuaded. However, several loose ends remain. Based on the specific arguments and contentions each party chose to make, it should be apparent from the detailed factual recitation set out above that the statutory factors of Section 14(h) of the Act have potential impact on the reasonableness issue, as I see it. These factors are external comparability, internal comparability, the interest and welfare of the public, and the continuity and stability of employment of the members of this bargaining unit.

Turning to the issue of the external comparables, I find this factor strongly supports the Union in the current case. Also, despite Management's claims to the contrary, external comparability may play an important role in interest arbitration, even on such issues as residency. See, City of Southfield, MI, 78 LA 153, 155 (Roumell, 1982). See, also, my discussion in City of Elgin, supra, ISLRB Case No. S-MA-00-102 (2002) at pp. 87-88.

With regard to the evidence adduced as to the existence and non-existence (or strictness or relative laxity) of residency requirements in the 12 external comparables, the evidence shows that seven of the comparables have no residency restrictions whatsoever. (U. Ex. 5, Tab 10.) One comparable, Forest Park, restricts residency only to the State of Illinois (U. Ex. 5, Tab 10.) There are four remaining communities that still have residency requirements, this record reveals. Of those, however, all except Chicago Heights have a residential footprint that is substantially larger than the residential zone that exists under the parties' *status quo* contractual language, as the

Union argues. Chicago Heights is, in fact, the only external comparable where its municipal boundaries constitute its residential zone, I note.

The Employer seeks to distinguish the circumstances existing in the external comparables by contending that there is no way of knowing what tradeoffs were made in exchange for each specific residency rule in these comparables. It also argues that specifics in the daily operations of each of the comparables are unknown, too. However, I did not make the comparability pool that exists on this record. The parties did, I note. The Employer's arguments do not persuade me external comparability has no role to play in resolving a non-economic issue. The Management arguments just noted, if applied generally, would result in external comparability being required to be discounted under virtually all circumstances where the dispute is not over economics, which I simply do not accept. I consequently do find that the Union's claim that the statutory factor concerning external comparability favors it is correct.

On the other hand, I disagree that the dicta by me in City of Galesburg, supra, ISLRB Case No. S-MA-03-197, at p. 81, as this Union suggests, requires that internal comparability is "not to be considered compelling on the residency issue." When I made that statement, I note, I had in mind the situation where there is a "me, too" clause for police and fire, such as the patrol officers have just negotiated in the MAP-Village labor contract. Since the time when I wrote City of Galesburg, I have become aware of particular situations in which my generalization about "me, too," is clearly incorrect. See, City of Alton, ISLRB Case No., S-MA-06-006 (Fletcher, 2007, discussing two earlier City of Alton interest arbitrations by Arbitrators Kossoff and Meyers²² that

²² *City of Alton*, ISLRB Case No. S-MA-02-0231 (Kossoff, 2003) and *City of Alton*, ISLRB Case No. S-MA-US-155 (Meyers).

resulted in completely different residency rules for police and fire. I understand that many interest Arbitrators view police and firefighter bargaining units to be strong and relevant internal comparables. Some do not. See, e.g., City of Blue Island and Blue Island Professional Firefighters Ass'n., Local 3547, ISLRB Case No. S-MA-01-198 (Hill, 2002). In the current dispute, the patrol officers' "me, too" provision in the MAP-Village contract essentially institutionalizes internal parity in this case. Internal comparability therefore favors Management, but I give that finding less weight than I might otherwise do because of the MAP-Village "me, too" clause.

In a real sense, I have already discussed the parties' arguments relating to what is in the best interests and welfare of the public under the Union's liberty interest argument. The Union considers firefighters to be part of the public. It argues that their "liberty interests" should trump any claims by Management that an expansion of the residency footprint would unnecessarily impair the Village's ability to protect the health and safety of its residents, and to protect property. Management, on the other hand, argues that the entire line of Union argument dealing with the individual opinions of Village Board members on the issue of residency is logically irrelevant. This is so because the majority of the Union's evidence on "Village Board Opinion" relates to the strict Village-boundaries rule governing administrators and supervisors, and not the *status quo* for protective service personnel and its liberalized residency footprint. Management also argues that the fact that this Village already made major concessions to obtain the *status quo* as set out in the current Section 17.12 more than counteracts the Union's generalized "right to choose where any American wants to live" contention. See, Village of Brookfield, supra, ISLRB Case No. S-MA-99-196 (Perkovich, 1999).

The statutory criterion of the public interest and welfare in the current dispute favors Management, the record seems to demonstrate, I hold. As noted at several points above, the Union has presented generalized testimony as to the disadvantages to its membership of the current residency requirements. A significant part of this argument is that the Village's residency rule restrict firefighters' personal freedom, but there is also the "inequity" contention regarding the lack of any restriction with respect to residency for those firefighters who were hired before 1994. Under these specific facts, this proof is insufficient to show a negative impact on the public's welfare based on the current *status quo*. The now rather routine evidence commonly presented in this type of dispute was not developed on this record, I note. These would be such factors as the family's desire for a specific school experience for a child; spouse's preferences and job locations for them, too; church, friendship and family ties; and housing market options. This is not the factual pattern of the Village of South Holland, *supra*, but it is not The City of Rockford either, I rule.

As I already have explained in detail, what this case comes down to is that there is a *status quo* that was created by arms-length negotiation and the trading of concessions for the 2001-2004 labor contract between these parties. I cannot say that a firefighter's quality of life is being adversely affected more now than it was during the 2001 contract negotiations. I cannot second guess the market as to the value of underpinnings of the deal then struck. This is not the situation facing Arbitrator Finkin in Village of University Park and IAFF Local 3661, where the parties were arguing "imponderables" in the abstract. It is also not a fact pattern that reveals a refusal by Management to ever bargain residency. Compare City of Urbana, ISLRB Case No. S-

MA-90-214 (Doering, 1991) with The City of Rockford, supra. Simply put, the deference to be given to a negotiated *status quo* is such, in my mind, that the Union argument in favor of "liberty interest" in this record is not convincing. I am not entirely unsympathetic on this point, but the Union's current demand of state-wide residency (City of Alton, Fletcher Arb.), supra, ISLRB Case No. S-MA-06-006, at p. 68) runs head-on into its own earlier bargained deal for Section 17.12, I find.

This brings us to the last statutory factor, namely, whether the Union's final proposal would enhance continuity and stability of employment because the current residency rule, in fact, has caused qualified bargaining unit employees to leave Department employment. This is an example of one of the few true factual discrepancies on this record, I note. The Union has presented results of a telephone interview conducted by it that it claims discloses that several out-of-work firefighters left this Village's employ because of the current residency rule. The Employer countered with testimony from Fire Chief Wilkens and the Department's exit interviews revealed that there has been no recruitment or retention problems because of the *status quo* residency footprint.

After careful consideration, I find the Union's arguments on this point seem, to a degree, at least, somewhat overblown or exaggerated. I find the evidence as to why specific firefighters left the Village's employ since 2001 to be essentially a wash. However, there is absolutely no proof that the residency rule has caused provable problems with current recruiting. There is also no evidence that the employees who have left their Village firefighter slots constitute an exodus sufficient to override the existing negotiated bargain. This record demonstrates a great deal of stability in the

bargaining unit, with very few vacancies, and a large number of qualified candidates waiting in the wings. Consequently, I am not persuaded that positions in the bargaining unit have deteriorated since Section 17.12 was negotiated by these parties at arms length in the 2001 contract negotiations. This is especially true since all current firefighters voluntarily entered the Village's employ and "decided to live and raise their families" in the current residency footprint and with full knowledge of the pre-existing residency requirement of Section 17.12, I find.

The parties have stipulated, since this issue is non-economic, I have a right to modify the offer and, in a sense, "write my own offer," based on the proofs presented and guided by and in compliance with the applicable Section 14(h) decision factors. The Union, as its final argument, indicates no reluctance to have me to do precisely that sort of offer writing. The Employer points out, on the other hand, that many Arbitrators naturally are reluctant to impose language on the parties, assuming that the parties are in the best position to decide what works. Along those lines, my award in Village of South Holland, supra, at p. 59 is cited.

Obviously, this issue is of great importance to these parties, because it was the sole issue brought in this current dispute. I also recognize, however, that drafting some sort of compromise beyond the facts of record certainly might work to the detriment of the collective bargaining process between these parties. I am even more reluctant to create language that would result in a fundamental contractual change given the negotiated status of Section 17.12. The parties already have demonstrated they can negotiate residency; they have already compromised by agreeing to the 2001 language just referenced. The Village has further demonstrated, via its patrol officers, that it is

willing to consider revisions where warranted, I also note. The Village proposed the police deal to this Union, which it rejected, I also point out. Thus, this Union cannot claim it did not have a chance to improve its position to at least some degree.

It is however to be remembered that the actual change reflected in the Employer's final proposal is the increase from 18 months to two years from a point when a new hire begins their term of employment to when the residency rule becomes applicable. That change therefore essentially has been negotiated and I thus incorporate it into my award in this case. The scrivener's detail concerning the Municipality of Beecher is a ministerial correction, which is why it was placed in a side letter in Management's proposal. I find that that, too, should be and is included in my award on the residency issue.

As to the question of whether I have the authority to effectively take an issue off the table for the period of the next or successor contract between these parties, I really am not sure that this is a legal possibility. At any rate, I have a strong suspicion that this current interest award might have the same effect on the subject of firefighter residency, but I can only hope. I will not order that aspect of the side letter that is set out in the Employer's proposal of January 10, 2008 to be part of this current award nor will I go beyond the two minor changes just set out. Basically, I am upholding the *status quo*, along the lines demanded by the Village, based on the totality of the evidence, with the two adjustments just noted. My Order and Award follow.

IV. AWARD

Using the authority vested in me by Section 14 of the Act, my Award is as follows:

Section 17.12 Residency

As a condition of employment, all employees who are hired on or after April 18, 1994 shall, within twenty-four (24) months of the bargaining of their term of employment and continuously thereafter, reside within the following streets and those incorporated municipalities which cross over those streets (other than Chicago, Joliet or any Indiana community): the Indiana border to the East, Farrell/Cherry Hill Road to the West, 127th Street to the North, and Eagle Lake Road to the South. Employees hired prior to April 18, 1994 may reside anywhere that is consistent with the rule in effect at the time they were hired.

The twenty-four (24) month period described in this section shall begin on the effective date of employment, notwithstanding that at the time of the commencement of the employee's hiring the employment shall be contingent upon any required probationary period.

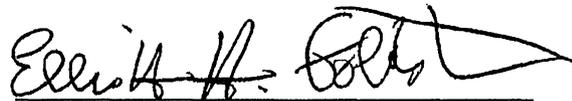
2. Add side letter of agreement to read as follows:

SIDE LETTER OF AGREEMENT REGARDING RESIDENCY PROVISION

During the course of negotiating Section 17.12, the parties assumed that Beecher corporate limits cross over Eagle Lake Road. Concerns have been raised, however, that in actuality Beecher's corporate limits may currently run adjacent to Eagle Lake Road, and thus the community would fall outside the residency area. Given the parties have assumed Beecher did cross over, however, the parties hereby agree to treat Beecher as having crossed over Eagle Lake Road regardless of whether that ultimately is the case.

The foregoing Award represents the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate all previously agreed-upon modifications, along with the specific determinations and Award made above. It is so ordered.

Date: May 13, 2008



Elliott H. Goldstein
Arbitrator